No. 80-795

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1980

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, the Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,

Petitioners,

vs.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., and JOSEPH BECA, on behalf of themselves and THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS members,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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QUESTION PRESENTED

May the International Society For Krishna Consciousness and its members be exempt, under the First Amendment, from Minnesota State Fair's rule which requires that all persons who solicit money or sell or distribute products or other materials during the annual 12-day fair do so only from a booth or other fixed location on the fairgrounds, when that rule is applied equally to all persons without regard to the content of their literature or products or religious beliefs?

PARTIES IN PROCEEDINGS IN MINNESOTA SUPREME COURT

Since the issuance of the judgment of the Minnesota Supreme Court there has not been any change in the parties participating in this case. Consequently, the caption of this Petition contains the names of all parties.

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IN THE

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No. ———

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, the Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

Petitioners (hereinafter "the Minnesota State Fair") respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Minnesota which reversed the declaration of the Minnesota District Court, Second Judicial District, that Minnesota State Fair rule 6.05, which restricts all fairgrounds' sales, solicitations and literature distribution to a fixed booth location, is constitutional under the First Amendment as applied to respondents International Society For Krishna Consciousness (hereinafter "ISKCON" or "Krishnas").

OPINIONS BELOW

The Opinion of the Minnesota Supreme Court is not yet reported. A copy of the majority and dissenting opinions are contained in Appendix A, *infra*. The Judgment and Order of the state district court are also unpublished and are set out in Appendix B, *infra*.

JURISDICTION

The Opinion of the Minnesota Supreme Court was filed on August 18, 1980. In this case, the Minnesota Supreme Court, the highest state court in Minnesota, held that Minnesota State Fair Rule 6.05, which has the force and effect of state law, is invalid as to ISKCON under the First Amendment to the United States Constitution. The jurisdiction of this Court is found in 28 U.S.C.A. § 1257(3).

LAW IN QUESTION

Rule 6.05 (hereinafter "booth rule") of the Minnesota State Fair provides:

> Sale or distribution of any merchandise, including printed or written material except under license issued [by] the Society [State Fair] and/or from a duly-licensed location shall be a misdemeanor.

The State Fair has the statutory authority to promulgate and enforce such rules under Minn. Stat. § 37.16 (1978). The Minnesota Supreme Court acknowledged that the booth rule has been applied to restrict sales, solicitations and distributions of materials to fixed locations on the fairgrounds. *See*, Minnesota Supreme Court Opinion at A-3 and Stipulation of Facts at para. 16.

STATEMENT OF THE CASE

This action was commenced on August 24, 1977, challenging the constitutionality of the State Fair booth rule in Ramsey County district court. On August 18, 1978, that court denied ISKCON's motion for a permanent injunction and granted summary judgment to the State Fair.

In essence the rule challenged by ISKCON provides that any person or group seeking to sell, exhibit or distribute materials during the annual Minnesota State Fair must do so only from a fixed location on the fairgrounds. Stipulation of Facts, para. 16. This policy is applied equally to all persons. *Id.* at para. 17. The State Fair leases space in booths and other buildings to such persons on a "first-come, first-served" basis without regard to the content of the materials distributed or sold. *Id.* The State Fair has not discriminated against ISKCON in any

manner and had expressed a willingness to rent booth space to its members. Stipulation of Facts, paras. 22, 23.

The fairgrounds occupies about 125 acres. From 1973-1978 the average attendance at the annual 12-day fair was about 1,320,000. The average week-day attendance has been 115,000, and the average attendance on Saturday and Sunday has been 160,000. The bulk of these persons as well as hundreds of exhibitors, concessionaires and State Fair employees are confined to about one-third of the entire 125 acres. Stipulation of Facts, paras. 20-21.

ISKCON claims to be a religious organization with rights under the First Amendment exempting them from the State Fair space rental policy. At least 40 other groups of religious, political, or journalistic nature have rented fixed booth space for the annual state fair. *See* Michael Heffron Affidavit, para. 10 and Exhibit A attached thereto.

The Krishnas hold a religious tenet which requires them to go into public places to proselytize and solicit funds. Krishna Joseph Beca, however, testified under oath there would be no harm suffered by either himself or ISKCON, if their activities were confined to booth space. Beca Deposition at 57-58.

One day before the beginning of the 1977 Minnesota State Fair, ISKCON and Beca filed their complaint in Ramsey County District Court and moved for a temporary restraining order. No evidence or testimony was received. Since the 1977 Fair was to end shortly, the court issued a Temporary Restraining Order two days after the motion, August 26, 1977. The Order enjoined the enforcement of the State Fair rule except as it applied to "sales" of materials by ISKCON. Thus, in 1977 the Krishnas were still prohibited from "selling or inducing others to purchase" any materials except from a rented fixed location on the fairgrounds.

Approximately 17 to 18 ISKCON members then conducted their solicitations and distributions during five or six days of the 1977 fair. Beca Deposition at 10, 23. The record in the trial court, however, showed that Krishnas had violated the trial court's order against sales outside a booth and had engaged in various deceptive practices. *See* Affidavit of Michael Heffron, July 27, 1978, para. 16, and Affidavits of Elizabeth Ann Murphy, Dwayne Bronk, William Paddock, Michael Gene Krogness and Glen Larson. Generally, these sworn and unrebutted affidavits showed that during the 1977 fair ISKCON members misrepresented their identities and the purposes of their solicitations of funds, solicited money from minors, and engaged in other similar conduct. As noted in some of the foregoing affidavits, one of the common forms of such conduct was the practice of ISKCON members of purporting to offer a fair patron a book, leaflet, flag or similar item as a gift, only to take it back if the recipient declined to make a monetary "donation." *See* Murphy, Paddock and Larson Affidavits, *supra*.

The state district court upheld the booth rule in an Order dated August 18, 1978. Exactly two years later, the Minnesota Supreme Court, by a 5-3 decision, reversed the trial court.

REASONS FOR GRANTING THE WRIT

I. THE MAJORITY OPINION OF THE MINNESOTA SUPREME COURT IS IN CONFLICT WITH THE DECISIONS OF SEVERAL FEDERAL COURTS IN ALMOST IDENTICAL CASES AND INCONSISTENT WITH THE FIRST AMENDMENT STANDARDS ESTABLISHED BY THIS COURT.

The 5-3 decision of the Minnesota Supreme Court invalidating the State Fair's booth rule on First Amendment grounds is contrary to recent decisions of several other courts. For example, in at least three other Krishna-State Fair cases federal district courts have rejected the Krishnas' First Amendment claims in sustaining booth rules almost identical to that at issue herein. *International Society For Krishna Consciousness, Inc. v. Barber, et al.*, No. 77-CV-328 (N.D. N.Y., filed August 25, 1980); *Hynes v. Metropolitan Government of Nashville*, 478 F.Supp. 9 (M.D. Tenn. 1979); and *International Society For Krishna Consciousness, Inc. v. Evans*, 440 F.Supp. 414 (S.D. Ohio 1977).

Like the rule at issue in the instant matter, the challenged rule in each of the foregoing cases required all fairgrounds exhibitors or concessionaires to confine their sales and monetary solicitations to a booth or other fixed location. Recognizing that First Amendment rights may be reasonably restricted in the face of significant or compelling countervailing state interests, those courts relied on several findings and conclusions relevant to this case. The state fairs' needs to protect the health and safety of all fairgoers and exhibitors, to preserve order and convenience in congested areas, to give all exhibitors and concessionaires equal access to fair patrons, and to minimize the problems of theft, fraud and misrepre-

sentations of solicitors and vendors were deemed significant. *ISKCON v. Barber, supra,* at 6-7, 17-29; *Hynes v. Metropolitan Government of Nashville, supra,* 478 F.Supp. at 11-12; and *ISKCON v. Evans, supra,* 440 F.Supp. at 423-425.

The size of the fairgrounds, the method of space rental, the number of fairgoers, the number of exhibitors and concessionaires and the limited nature of the fair rules were considered crucial to the inquiry. It is noteworthy that, as described hereinafter, the Minnesota State Fair's booth rule is no more restrictive than the rules in the New York, Tennessee and Ohio fairs, and the Minnesota Fair's attendance and participation statistics are comparable to the largest of those three fairs. *See, ISKCON v. Evans, supra,* at 418 and Minnesota Supreme Court decision at A-6, 7.[1]

In addition to the above-described state fair cases, there recently have been federal court decisions in other contexts which appear to be contrary to the Minnesota Supreme Court's opinion. The court of appeals in *International Society For Krishna Consciousness v. Eaves,* 601 F.2d 809, 828-29 (5th Cir. 1979) sustained that part of an Atlanta airport regulation which limited Krishna monetary solicitations to booths. As was true in the above state fair cases, the Court in *Eaves* concluded that the governmental unit's need to minimize congestion and enhance crowd control was a sub-

[1] It is true, of course, that this Court declined to review the decision of the Seventh Circuit Court of Appeals adverse to the Indiana State Fair in Bowen v. International Society For Krishna Consciousness, 600 F.2d 667 (7th Cir. 1979), *cert. den.*, 100 S.Ct. 448. But, unlike the instant case, the record in the Indiana case suggested that Krishna members had been singled out for punishment, criminal prosecution and harassment. *Id.*, 456 F.Supp. 437, 440 (S.D. Ind. 1978). Not only is such evidence non-existent in this case, it is established that the only remedy used against persons who violate the Minnesota State Fair's rule is expulsion from the fairgrounds. Affidavit of Michael Heffron, dated August 25, 1977, at para. 15.

stantial health and safety interest which outweighed the limited restriction on the Krishnas' claimed right to collect money peripatetically throughout the airport. *Id.* Similarly, a federal district court has upheld a New York City World Trade Center rule which restricts solicitations to fixed areas in the Center's shopping concourse. *International Society For Krishna Consciousness v. McAvey*, 450 F. Supp. 1265 (S.D. N.Y. 1978).

Another example of the divergence among the jurisdictions as to the restrictions which may be placed on sales and solicitations activities is *United States v. Boesewetter*, 463 F.Supp. 370 (D.D.C. 1978). In that case the district court dismissed a criminal prosecution against an individual who had violated a federal regulation which totally prohibited the sale or distribution of newspapers and pamphlets anywhere inside certain park buildings, including the Kennedy Center. The court, however, expressly stated that time, place and manner restrictions would be appropriate in order to respect the rights of competing pamphleteers and solicitors. *Id.* at 373.

As will become more clear hereinafter, the State Fair's booth rule is a limited and reasonable time, place and manner restriction that is applied equally to all persons and, unlike the majority decision of the Minnesota Supreme Court, is consistent with this Court's standards for evaluating First Amendment claims.

II. THE MINNESOTA SUPREME COURT MISAPPLIED THIS COURT'S FIRST AMENDMENT STANDARDS TO THE STATE FAIR'S BOOTH RULE.

A. Introduction.

This Court has employed different approaches to the various types of disputes that arise under the First Amendment. For example, measures which regulate the content of a speaker's message are viewed far more harshly than regulations involving a speaker's access to a locale from which to express his views. *Compare Brandenburg v. Ohio*, 395 U.S. 444 (1969) with *Greer v. Spock*, 424 U.S. 828 (1976). Similarly, far stricter standards have been applied to laws and regulations which impose prohibitions on First Amendment activities than to measures which do not effect a total deprivation. *Compare United States v. Robel*, 389 U.S. 258 (1967) with *Cox v. New Hampshire*, 312 U.S. 569 (1941).

It is, therefore, helpful to follow the advice of Mr. Justice Frankfurter in *Niemotko v. Maryland*, and "first set to one side decisions which are apt to mislead rather than assist." 340 U.S. 268, 276 (1951) (Frankfurter, J., concurring). *See also ISKCON v. Evans*, 440 F.Supp. 414 (1977). For that reason it is important to focus on what the State Fair's booth rule does *not* require.

First, the State Fair does not prohibit particular persons or groups from attending the fair and discussing their beliefs in any public area of the fairgrounds. Second, the State Fair rule does not vest officials with any real discretion in ascertaining whether or not Krishnas are entitled to engage in their desired practices at the State Fair. Stipulation at para. 20. Third, the State Fair rule does not restrict *any* activity on the basis of the content of anyone's speech. Fourth, this

case does not involve any abridgment of rights of belief and/or association. Finally, in this case the State Fair has not sought to insulate totally its property from use as a public forum. *See e.g., Chicago Area Military Project v. City of Chicago,* 508 F.2d 921 (7th Cir. 1975), *cert. denied,* 421 U.S. 992. *Cf., Schneider v. State,* 308 U.S. 147 (1939); *Hague v. C.I.O.,* 307 U.S. 496 (1939).

Regulating speech by its content, vesting discretion in state officials in determining what can and cannot be heard, depriving people of rights of equal opportunity in employment because of beliefs and associations are matters of serious First Amendment concern and have been so treated in the cases. However, such considerations are not applicable when the state imposes a reasonable restriction only on the time, place, or manner under which the purported First Amendment activity may be practiced. A time, place or manner regulation is thus necessarily entitled to a greater deference of constitutionality, and indeed this Court has expressly adopted this position:

> A restriction . . . designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection.

Cox v. Louisiana, (Cox I) 379 U.S. 536, 554 (1965).

In light of the limited nature of the State Fair's booth rule and what it does *not* entail, it is stressed that in the instant case the Krishnas are not carrying the banner of a fight against censorship, non-access or discriminatory treatment.

B. The Booth Rule Serves Significant Governmental Interests And Is A Reasonable Time, Place and Manner Restriction Consistent With First Amendment Standards.

Even though much of the fairgrounds is a public forum, the booth rule should also be judged as to whether it serves a significant or compelling government interest in a reasonable manner. This test is merely a combination of the following formulations from relevant First Amendment cases:

> We have often approved [time, place and manner] restrictions . . . provided that they are justified *without reference to the content of the regulated speech,* that they serve a *significant governmental interest,* and that in so doing they leave open *ample alternative channels* for communication of the information.

Va. State Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 771 (1976) (emphasis added);

> Although American constitutional jurisprudence . . . has been zealous to preserve access to public places for purposes of free speech, the *nature of the forum and the conflicting interests* involved have remained important in determining the degree of protection afforded by the [First] Amendment to the speech in question.

Lehman v. City of Shaker Heights, 418 U.S. 298, 303 (1974) (emphasis added);

> If a municipality has authority to *control the use of its public streets for parades or processions,* as it undoubtedly has, it cannot be denied authority to give consideration, *without unfair discrimination, to time, place and manner* in relation to other purposes of the streets.

Cox v. New Hampshire, 312 U.S. 569, 574 and 576 (1941) (emphasis added); *See also Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 155 (1969); *Cox v. Louisiana*, 379 U.S. 536 (1965) and the dissenting opinion of the Minnesota Supreme Court at A-12.

It follows that it is a significant governmental interest to adopt rules which will protect the safety, health and convenience of *all* persons who use crowded public and commercial areas for which there may be competing demands. Of course, such rules must be reasonable as to the time, place and manner of the restrictions. Finally, the rule must not be vague, it must be applied equally to all perons, it must not allow the potential for an abuse of discretion by administrators, and it must provide alternative means for exercising free speech and freedom of religion rights. The record in the instant case, as shown by the following, contains facts which meet the above tests.

1. The Booth Rule Serves Significant Public Interests.

Several undisputed facts presented to the trial court are relevant to the issue of public interests. For example, the annual Minnesota State Fair is held in a fenced-in area of about 125 acres, with the bulk of activities confined to an area approximately one-third of that size.[2] From 1973-1978 an average of about 1,300,000 persons, excluding concessionaires and exhibitors, have attended each 12-day fair.[3] There are an additional 1,400 exhibitors and concessionaires and their employees who annually exhibit or sell products (including religious, political and journalistic materials) from

[2] Stipulation of Facts, para. 20, and Affidavit of Michael Heffron, para. 3, July 27, 1978.

[3] Stipulation of Facts at para. 21 and Affidavit of Michael Heffron, paras. 4 and 18.

leased booth space.[4] Furthermore, the State Fair must exclude approximately 300-500 concession and exhibit applications each year due to insufficient space.[5] Because of the congested conditions during the annual fair, it is critical to provide speedy emergency health, police and fire services.[6] At the 1978 State Fair there were approximately 40 concessionaire/exhibitors who leased booth space on the fairgrounds to disseminate or sell newspapers and religious and political materials.[7]

Certainly the public interests manifested in the foregoing facts and served by the State Fair's booth rule are as legitimate and significant as those approved by this Court in other cases. In *Murdock v. Pennsylvania*, 319 U.S. 105 (1943) this Court struck down an ordinance which totally proscribed door-to-door solicitation by persons who had not first paid a license fee which was unrelated to the need for the ordinance. But, it was stated that not only was the holding based largely on the arbitrariness of the license fee, but also that the manner in which First Amendment activities are exercised raises problems that can be regulated by police powers if done so reasonably. *Id.* at 110.

In addition, when a proposed activity by one group might conflict with or affect the use of public areas by other citizens, it is proper to consider the public safety and convenience which might be affected by such activity. *Grayned v. Rockford*, 408 U.S. 104, 116-117 (1972) (upheld ordinances which restricted use of public streets for picketing and demonstrations); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 155 (1969) (applied reasonable time, place and manner restrictions in the face of competing uses); *Cox v. New*

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[4] Stipulation of Facts, para. 19 and Affidavit of Heffron at paras. 10 and 11 and Exhibit "A" thereto.
[5] Stipulation of Facts, para. 18.
[6] Affidavit of Heffron, para. 7. See Argument III(B)(4), infra.
[7] *Id.*, paras. 10 and 11 and Exhibit "A" thereto.

Hampshire, 312 U.S. 569, 576 (1941) (considered the need for "proper policing" of Jehovah's Witnesses' solicitations in order to serve public safety and convenience in the use of public areas).

In light of the obvious and uncontroverted demands upon the State Fair for the use of very limited space by both concessionaries/exhibitors and patrons and the problems of providing responsive police, health and safety services in congested areas, surely the interests served by the booth rule are significant public concerns. The claim that roving ISKCON solicitors would not create any congestion problems at an already crowded fair is perhaps appealing on its face but is naive and unrealistic. Beyond the fact that such claim does not really deny the existence of the above-cited significant governmental interests, it also is obvious that on a crowded fairgrounds where there are thousands of people very few roving solicitors, who clearly would stand out because of their being the only group given such a privilege, would attract curious crowds disproportionate to their numbers. Moreover, the mere fact that the annual fair is already crowded is an insufficient reason for the State Fair not to minimize the problems created by crowds. Simply because it presently may be difficult for an ambulance, fire truck or police vehicle to reach parts of the fairgrounds as quickly as they could without any patrons present, it cannot seriously be suggested that the State Fair staff should not attempt to reduce those difficulties in a reasonable manner.

The majority opinion of the Minnesota Supreme Court indeed acknowledges "the importance of the state's undeniable interest in preventing widespread disorder that would surely exist" without the booth rule. Minnesota Supreme Court opinion at A-7. But the Court then states that the proper test

is for the Fair to show that it cannot avoid any disorder by granting an exemption from the rule to the Krishnas. *Id.* But, to grant special favors to certain groups because of an alleged doctrinal basis in that group's underlying philosophy, is to choose between the types of ideas that are allowed to be presented to the public. It is exactly this type of abuse that the First Amendment was designed to avoid. *See, Fowler v. Rhode Island,* 345 U.S. 67 (1953); *Niemotko v. Maryland,* 340 U.S. 268 (1951). ISKCON's request for special dispensation is a request for favoritism and special status and thus cuts against one of the central notions of the First Amendment, the equality of ideas.

2. Peripatetic Solicitations and Distributions By Krishnas Would Be Unfair To Other Similarly Situated Exhibitors and Concessionaires.

The Minnesota Supreme Court erroneously found, Opinion at A-7, n. 7, that the practice of Sankirtan by Krishnas necessitates that their sales, solicitations and distributions of materials be done on a roving, or peripatetic, basis throughout all public areas. That finding is contrary to the parties' Stipulation of Facts which simply states that Sankirtan "consists of going out into public places to disseminate or sell religious literature and to solicit contributions. . . ." The record herein merely supports a finding that Krishnas have a religious belief which compels them to go out into public places to solicit funds and distribute religious materials; that finding does not exclude such activities from being carried out from fixed locations in public places.

Furthermore, the record also establishes that, in actual practice, during the 1977 Minnesota State Fair Krishnas "disseminated" flowers, flags, fairgrounds maps and similar objects of no realistic religious significance. Affidavits of Michael Heffron, para. 16; Dwayne Bronk, para. 3; William Paddock, para. 3; and Glen Larson, para. 2. It is obvious not only that such items do not bear any relationship to the Krishnas' religion but they merely represent the initial step in many Krishnas' attempts to deceive prospective purchasers and contributors. *See ISKCON v. Barber, et al.*, No. 77-CV-328 at 17-29 (N.D. N.Y., August 25, 1980).

The error of the Minnesota Supreme Court in finding, without any support in the record, that Sankirtan mandates peripatetic solicitations is compounded by the Court's failure to give a meaningful consideration of the consequences of that finding. *Cf. Lehman v. City of Shaker Heights*, 418 U.S. 298, 304 (1974); *Cox v. Louisiana*, 379 U.S. 536, 554-55 (1965). If the lower court's decision is allowed to stand, it would be just as reasonable under the First Amendment for the scores of political candidates at the Minnesota State Fair to roam the fairgrounds buttonholding patrons and distributing campaign stickers and leaflets;[8] or for an unknown number of journalists to sell or pass out newspapers and magazines in the same manner; or for a wide variety of religious groups ranging from the Unification Church and the Church of Scientology to Lutherans, Jehovah's Witnesses and Baptists to do the same things. At recent annual fairs there have been many organizations with First Amendment rights as well

[8] In Wolin v. Port of New York Authority, 392 F.2d 83, 85 (2d Cir. 1968), *cert. denied*, 393 U.S. 940, the court held that the port authority could not absolutely exclude "political expression" from its terminal. This holding, of course, also recognizes that political candidates have well established First Amendment rights.

established as those of ISKCON, and the number doubtlessly would multiply if the fair is made available for roving solicitations. Affidavit of Heffron at para. 10 and Exhibit "A". What makes the solicitation of money more traditional for ISKCON than any other religion?

The difficulties of providing traditional police power protection by the State Fair would, of course, be greatly magnified if all religious, political and press organizations were permitted to solicit money and distribute materials randomly on the fairgrounds. It is largely for that reason that the booth rule constitutes a reasonable accommodation of all interests.

The Minnesota State Fair is a limited resource. There is an intense desire on the part of a great many vendors and solicitors to take advantage of the State Fair during the limited period when the State Fair is in session. The most reasonable, the most fair, the most neutral, the most ordered manner by which these competing interests can be accommodated is by the establishment of the booth system. The booth system, rented as it is on a first-come, first-served basis, assures that no group, political, religious, or otherwise, will receive a favored position, and it guarantees that all groups wishing to disseminate ideas, sell products or solicit funds will have the opportunity to do so without interruption.

The booth system inherently reduces the possibility for one organization to obtain any unfair advantage over another, both by giving all groups the same opportunities to contact an equal number of patrons and by prohibiting them from obstructing or interfering with others engaged in similar activities. In addition to assuring that there can be no favoritism on the part of the state officials towards any group,

the policy also assures that any given ideology, religion or political view will not have the appearance of state sanction. *See Lehman v. Shaker Heights*, 418 U.S. 298 (1974). The Minnesota Supreme Court's majority opinion, however, is destructive of these values and legitimate First Amendment goals.

3. For First Amendment Purposes, The Nature, Purpose and Lay-out of the Minnesota State Fair Set It Apart From Open Parks, Transient Facilities And Other Traditional Public Forums.

Another error of the Minnesota Supreme Court's majority opinion is that it did not truly consider the "nature of the place" and whether "the manner of [proposed] expression is basically incompatible with the normal activity of a particular place at a particular time." *Grayned v. Rockford*, 408 U.S. 104, 116 (1972). *See also Wolin v. Port of New York Authority, supra* at 89, where the court noted the importance of the "function" of the place proposed for unregulated free speech activity. The purpose and function of most state fairs has been appropriately defined by the court in *ISKCON v. Evans*, 440 F.Supp. 414, 424-25 (S.D. Ohio 1977):

> . . . to house an agricultural and industrial exposition and to support educational and competitive junior activities. At this time the fairgrounds are *not on a constitutional plane with an open-air park or street corner* "immemorially . . . held in trust for the use of the public, and, time out of mind, . . . used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. Committee*

for Industrial Organization, 307 U.S. 496, 555, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939).
(Emphasis added).[9]

The statement by the court in *ISKCON v. State Fair of Texas*, 461 F.Supp. 719, 721 (N.D. Tex. 1978) that a fair is a "congeries of hawkers, vendors of wares and services, and purveyors of ideas . . ." does not alter the purpose of the Minnesota fair. Furthermore, any hawking, vending or purveying are clearly confined to fixed locations.

Certainly, the nature and purpose of the State Fair are significantly different from those of streets, airports, bus terminals and similar facilities which people use primarily merely to travel from one place to another. Persons who travel through transportation terminals, for example, are not likely to stay there long and, thus, probably would not be approached by more than one Krishna solicitor before their exit for their destinations. In addition, the fairgrounds certainly is not comparable to a public park or similar area traditionally used by a wide variety of public speakers. *Compare Wolin v. Port Authority of New York*, *supra*, and *ISKCON v. McAvey*, *supra*. Similarly, persons who are solicited by door-to-door salespersons or religious advocates can easily close their doors at any time or refuse to answer them. *Compare Murdock v. Pennsylvania*, *supra*. But, a person who pays the admission fee and enters the enclosed Minnesota fairgrounds naturally does so with the purpose of attending the fair and with far less control over unwanted solicitations.

Admittedly, patrons have the freedom to reject any Krishna solicitation and walk away, but the only certain means that

[9] *Compare* Minn. Stat. §§ 37.01 and 37.15 (1978), which provide that the purpose of the annual Minnesota fair is to promote agriculture, horticulture, stockbreeding, manufacturing, mining and mechanical arts and sciences.

patrons have for avoiding repeated solicitations by the same or other ISKCON members as they roam the fairgrounds would be to leave the fair itself. The Minnesota Supreme Court's decision realistically would give thousands of unsupportive fairgoers two choices: 1) leave the fairgrounds to avoid roving solicitations; or 2) repeatedly reject the unwanted Krishna solicitations or other requests, flags, books or flowers pinned on their clothing. Such choices simply are unreasonable, particularly if several political and religious groups engage in similar practices. *Compare Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974).

III. THE RECORD HEREIN CLEARLY SHOWS FRAUDULENT CONDUCT AND VIOLATIONS OF THE 1977 TRO BY THE KRISHNAS.

In regard to the Krishnas' desire to conduct their activities at will throughout the fairgrounds there is another important fact in the instant case which is relevant both to a balancing of interests and to the appropriateness of equitable relief. That is, there is uncontroverted evidence of deceptions, fraud and other misconduct by Krishnas during the 1977 annual fair.[10]

The fair staff received 234 unsworn complaints,[11] some of which indicated that ISKCON members not only violated the restraining order by *selling* articles outside a rented booth

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[10] The Ramsey County District Court had initially granted ISKCON a temporary restraining order permitting it to distribute materials and collect donations but denying its members the right to "sell" any items without a booth. Thus, 17 or 18 ISKCON members solicited throughout the fairgrounds during the 1977 fair. Deposition of Joseph Beca at 10 and 23.

[11] *See* Heffron Affidavit, para. 16.

but also misrepresented their identities and the purposes[12] of their requests for funds and solicited minors. In addition, in support of their motion for summary judgment the State Fair submitted 5 sworn affidavits from persons who attended the 1977 fair and personally observed the misconduct by ISKCON members. *See* Affidavits of Elizabeth Murphy, Dwayne Bronk, William Paddock, Michael Krogness, and Glen Larson, submitted to the district court as Exhibits B, C, D, E and F respectively. These affidavits, which were unrebutted, show that ISKCON members *sold* articles in violation of the 1977 restraining order, retrieved "gifts" if no donations were given by fair patrons, persisted in soliciting obviously unwilling listeners and identified themselves as teachers and members of a Minnesota state agency. *Compare Va. State Board of Pharmacy v. Va. Citizens Consumer Council, supra* at 771 (false or misleading speech is not protected).

A revealing insight into the Krishnas' real sales and solicitations techniques is found in the recent case of *ISKCON v. Barber, et al.*, No. 77-CV-328 (N.D. N.Y., Aug. 25, 1980). Approximately 13 pages of that court's opinion is devoted to describing the fraudulent practices and misrepresentations of Krishnas at the Syracuse fair from 1977-1979. The following are but a few examples: 1) In introducing themselves to fair patrons Krishnas were instructed to slur the word "Krishna" to make it sound like "Christian;" 2) they would pin flowers, flags and "Keep on Truckin'" buttons on fairgoers without their consent; 3) coerce youths and handicapped persons into giving substantial monetary donations; and 4)

[12] Some of the complaints showed that ISKCON members told fairgoers that they were representatives of the Department of Natural Resources or the State Fair or were collecting funds for agricultural schools or needy children. Heffron Affidavit, para. 16.

misrepresent purposes for which donations would be used. As the court noted, "One of the only things that the Krishnas did not do at the State Fairs was to discuss their religion [with] fair goers." *Id.* at 28.

The foregoing facts are wholly consistent with the Krishna activities at the 1977 Minnesota State Fair as established by the record before the Minnesota Supreme Court.

It has been suggested that the remedy for such misconduct is to prosecute the individual offenders. But, that answer is too simplistic and impractical, especially in light of the fact that the Krishna misrepresentations and coercions appear to be systematic. The difficulties of policing consumer fraud, thefts and assaults by roving vendors or hawkers would be enormous. There is no doubt, of course, that such misconduct already occurs on the fairgrounds, but it is unquestionably much easier to trace, investigate and prosecute offenders when the incident occurs at an easily identifiable fixed location with a known employer or owner than it is when the offender is merely a face who vanishes in the crowd and whose employer is unknown.[13] Even the mere presence of vendors in open areas of the fairgrounds realistically is likely to attract crowds of people curious to see "what is happening." Such occurrences surely would create further impediments for emergency services vehicles.

The unique difficulties for apprehending and prosecuting a peripatetic vendor or solicitor on a fairgrounds crowded with thousands of people were underscored by the Court in *Barber, supra*:

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[13] Trying to apprehend a thief or someone guilty of consumer fraud during a 12-day fair with no apparent connection to a registered booth operator in a crowded fairgrounds is literally impossible. The harm to the public in such situations is clear.

> The [booth] regulation is a reasonable means to combat widespread fraud that cannot be effectively checked by the criminal justice system. . . . Plaintiffs have made little, if any, attempt to control its members or to bring these incidents [of fraud and deception] to a halt. Quite the contrary, the Krishnas have condoned such practices by using experienced 'thieves' to teach its newer members how to solicit money from the public in exactly the same way . . .

Id. at 38 (emphasis added).

Consequently, the evidence in this and other cases shows that many Krishnas are not innocent disciples who are being prevented from spreading their religious beliefs by oppressive and discriminatory bureaucrats. They are, instead, often experienced deceivers who are seeking a special monetary advantage over other fairgrounds concessionaires and exhibitors, many of whom have equally strong First Amendment claims. It was error for the Minnesota Supreme Court to grant such advantage.

CONCLUSION

Thus, the petition for certiorari should be granted to correct the result in this case so that the State Fair's booth rule may be applied equally to all participants in the annual fair.

Dated: November 13, 1980.

Respectfully submitted,

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APPENDIX A

No. 335 (1979)
Ramsey County
INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., et al.,

Appellants,

49526

vs.

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, et al.,

Respondents.

Endorsed
Filed August 18, 1980
John McCarthy, Clerk
Minnesota Supreme Court

Peterson, J. Dissenting, Todd, J., Sheran, C.J., and Scott, J. Took no part, Amdahl, J.

SYLLABUS

Minnesota State Fair Rule 6.05, which is interpreted by the Minnesota state agricultural society to restrict to fixed locations on the fairgrounds all sales and distributions of merchandise, is unconstitutional as applied to members of a religious society who wish to distribute and sell religious literature and solicit donations for religious purposes throughout the public areas of the fairgrounds.

Defendants are to be enjoined from enforcing Rule 6.05 against members of plaintiff International Society for Krishna Consciousness, Inc.

Reversed and remanded with directions.

Heard, considered, and decided by the court en banc.

OPINION

PETERSON, Justice.

Plaintiffs International Society for Krishna Consciousness, Inc. (ISKCON), a religious organization, and Joseph Beca, a member of ISKCON, challenge on this appeal the trial court's refusal to declare Minnesota State Fair Rule 6.05 unconstitutional and enjoin permanently the rule's enforcement. We conclude that enforcement of Rule 6.05 against members of ISKCON would violate their constitutionally guaranteed right to free exercise of religion.

Plaintiff ISKCON maintains temples and schools throughout the world and is organized under the laws of this state as a nonprofit religious corporation. Members of ISKCON espouse the doctrines of Krishna Consciousness, a branch of the Hindu religion. Krishna Consciousness requires its followers to perform an evangelical ritual known as Sankirtan. The performance of Sankirtan consists of going out into public places to distribute or sell religious literature and to solicit donations for the support of Krishna Consciousness. The declared purposes of Sankirtan are to spread the doctrines of Krishna Consciousness, to attract new members to ISKCON, and to gain financial support for ISKCON's religious and educational activities.[1]

Plaintiff Joseph Beca is an ISKCON priest and the head of ISKCON's Minneapolis temple. Beca and other members of ISKCON wish to practice Sankirtan at the Minnesota state fair, an event which takes place from late August through

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[1] This case is presented to us upon stipulated facts. The parties' stipulation provides in part: "In performing Sankirtan, ISKCON devotees often greet members of the public by giving them flowers or small American flags, but for the purpose of this lawsuit they seek only to solicit contributions for their literature and their religious activities, and not for these greeting gifts. They do not seek to dance, chant, or to engage in any other potentially disruptive or disorderly conduct."

early September of each year. Rule 6.05, as promulgated by the Minnesota state agricultural society (the society), a governmental body which has control of the state fairgrounds and responsibility for administration of the state fair, prohibits the sale or distribution on the fairgrounds of "any merchandise including printed or written material except under a license issued [by] the Society and/or from a duly licensed location."[2] The state fair's policy in applying Rule 6.05 has been to restrict all sales and distributions of materials at the fair to fixed locations on the fairgrounds. In most instances these fixed locations take the form of booths or buildings rented from the society by sellers and distributors.[3] Plaintiff

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[2] Minn. Stat. § 37.16 (1978) authorizes the society to make "all bylaws, ordinances, and rules, not inconsistent with law, which it may deem necessary or proper for the government of the fairgrounds and all fairs to be held thereon, and for the protection, health, safety, and comfort of the public thereon" and provides that "[t]he violation of a bylaw, rule, or ordinance promulgated by the society is a misdemeanor."

The president and secretary of the society are authorized to appoint "special constables or deputies * * * for the regulation of the Minnesota state fairgrounds" who 'shall have and exercise upon the [state fairgrounds] all the power and authority of peace officers and, in addition thereto, may, within these limits, without warrant, arrest any person found violating any law of the state, or any rule, regulation, bylaw, or ordinance of the society, and may summarily remove the persons and property of such offenders from the grounds and take them before any court of competent jurisdiction to be dealt with according to law." § 37.20.

[3] The board of managers of the society, the members of which are defendants in this action, is vested with the management and control of the affairs of the society. § 37.04, subd. 1. One of the society's duties is to hold an annual fair upon the fairgrounds. § 37.15.

Defendant Michael Heffron, as secretary of the board of managers of the society and manager of the state fair, has responsibility for supervising all activities at the state fair and for implementing and enforcing all state fair rules and regulations.

Defendant Harveydale Maruska, as president of the board of managers of the society, has responsibility along with defendant Heffron for appointing peace officers to enforce all state laws and all rules, regulations, bylaws, and ordinances of the society on the fairgrounds.

Defendant Warren Spannaus, the attorney general of the State of Minnesota, directs a member of his staff to prosecute those arrested at the fairgrounds for violations of state laws or of rules, regulations, bylaws, and ordinances of the society.

ISKCON has been notified that its members who practice Sankirtan at the fair must confine all distributions and sales of religious literature and solicitations of donations to a rented booth.

Members of ISKCON are unwilling to have their practice of Sankirtan so restricted. They wish to distribute and sell religious literature and solicit donations throughout the areas of the fairgrounds that are open to the public. In August 1977, plaintiffs, on behalf of themselves and all members of ISKCON, commenced this action under 42 U.S.C. § 1983 (1979) and Minn. Stat. § 555.01 (1978) for a judgment declaring that Rule 6.05 violates the First and Fourteenth Amendments of the United States Constitution. Plaintiffs also asked the trial court to enjoin defendant state officials from enforcing Rule 6.05 against members of ISKCON who practice Sankirtan in public areas of the fairgrounds.

The trial court issued a temporary restraining order prohibiting defendants from preventing members of ISKCON from proselytizing, distributing religious literature, or soliciting donations for religious purposes in public areas of the fairgrounds during the 1977 state fair. The trial court, however, enjoined members of ISKCON from "selling or inducing others to purchase" religious literature or items at any location within the fairgrounds other than one rented for that purpose. The parties thereafter made cross-motions for summary judgment based upon stipulated facts. By an order dated August 18, 1978, the trial court granted defendant's

motion for summary judgment and denied plaintiffs' motion.[4] This appeal ensued.

The question presented for our decision is whether it is constitutionally permissible for defendants to apply Rule 6.05 so as to require the members of ISKCON who practice Sankirtan at the state fair confine their distribution, sales, and solicitation activities to a rented booth. The First Amendment of the United States Constitution forbids the enactment of laws prohibiting the free exercise of religion.[5] The time, place, and manner of religious activity may, however, be subject to reasonable and nondiscriminatory regulation if necessary to further an important governmental interest. *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940). Defendants concede that Sankirtan is a religious activity entitled to First Amend-

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[4] The trial court's order provides:

IT IS HEREBY ORDERED that plaintiffs' motion for summary judgment is in all respects denied. Defendants' motion for summary judgment is in all respects granted.

IT IS FURTHER ORDERED that plaintiffs are prohibited from

1) Engaging in any distribution of materials (e.g., books, flowers, flags, incense, artifacts, etc.) throughout the fairgrounds, except from rented booth space;

2) Engaging in any sales or solicitation for monetary donations throughout the fairgrounds, except from rented booth space;

However, plaintiffs are permitted to:

Roam throughout those areas of the fairgrounds generally open to the public for the purpose of discussing with others their religious beliefs.

[5] "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." U.S. Const. amend. I. "The Fourteenth Amendment has rendered the legislatures or the states as incompetent as Congress to enact such laws." *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

ment protection.[6] They argue that Rule 6.05, as applied by them to members of ISKCON, does not offend the First Amendment because it is a permissible regulation of the place and manner of the practice of Sankirtan.

Plaintiffs do not claim that Rule 6.05 has been applied to members of ISKCON in a discriminatory fashion. What is at issue here is the reasonableness of the rule as a place and manner regulation. The application to an individual of a governmental regulation which incidentally restricts him in the exercise of a First Amendment right is permissible only if the regulation "furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *International Society for Krishna Consciousness, Inc. v. Conlisk*, 374 F.Supp. 1010, 1015 (N.D.Ill. 1973) (quoting *United States v. O'Brien*, 391 U.S. 367, 377 (1968). The party urging that application of the regulation be upheld has the burden of proving that these criteria are met. *Elrod v. Burns*, 427 U.S. 347, 362 (1976). Defendants have not sustained that burden in this case.

Defendants assert that the state's interest in maintaining order at the state fair is sufficiently important to justify the application of Rule 6.05 to members of ISKCON. The state fairgrounds comprise approximately 125 acres. An average

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[6] Proselytism, the distribution or sale of religious literature, and the solicitation of donations by members of a religious organization who seek to attract new members and to generate financial support for the organization have long been considered activities protected by the First Amendment. *See Murdock v. Pennsylvania*, 319 U.S. 105, 110-11 (1943); *Cantwell v. Connecticut*, 310 U.S. at 305. For cases treating Sankirtan specifically as a bona fide religious practice, *see, e.g., International Society for Krishna Consciousness, Inc. v. Bowen*, 456 F.Supp. 437, 441-42 (S.D. Ind. 1978), *aff'd*, 600 F.2d 667 (7th Cir. 1979), and cases cited therein.

of 115,000 persons visit the fairgrounds each weekday while the state fair is in progress. On Saturdays and Sundays daily attendance averages 160,000. Approximately 1,400 exhibitors and concessionaires rented space at the 1977 and 1978 state fairs. We agree that these facts suggest a situation in which the state's interest in maintaining order is substantial. We have no doubt that Rule 6.05's requirement that all vendors, exhibitors, and concessionaires perform their functions at fixed locations furthers that interest significantly.

What defendants must demonstrate, however, is not the importance of the state's undeniable interest in preventing the widespread disorder that would surely exist if no regulation such as Rule 6.05 were in effect. Rather, they must establish the importance of the state's interest in avoiding whatever disorder is likely to result from granting members of ISKCON an exemption from compliance with the rule.[7]

It is fundamental that First Amendment rights may be restricted only for weighty reasons. We note that members of ISKCON are not prohibited from proselytizing throughout public areas of the fairgrounds. Some disorder is bound to attend this activity. We are not convinced that allowing ISKCON members to also distribute religious literature and accept money throughout public areas of the fairgrounds

[7] If Sankirtan is to be practiced properly, the various activities included in the practice of Sankirtan must be performed in a peripatetic manner. Members of ISKCON therefore have a special claim to an exemption from Rule 6.05 on free exercise grounds. Commercial vendors of literature can make no similar claim.

Defendants argue that the facts as stipulated by the parties do not establish that Krishna Consciousness requires its followers to perform all of the activities comprising Sankirtan in a peripatetic manner. We recognize that in deciding this case we are limited by the parties' stipulation. We believe, however, that the peripatetic nature of Sankirtan is easily inferrable from the parties' explanation in their stipulation that the ritual is performed by "going out into public places."

would cause additional disruption sufficient to justify confining those activities to a booth.[8]

Even if we assume the importance of the state's interest in preventing the disorder that will result from allowing members of ISKCON to distribute or sell religious literature and receive donations in public areas of the fairgrounds, we are not persuaded that application of Rule 6.05 to members of ISKCON is essential to the furtherance of that interest. The state's interest can be adequately served by means less restrictive of First Amendment rights. Conduct that tends to create disorder on the fairgrounds may be specifically prohibited.

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[8] During oral argument in October 1979, defendant suggested an additional interest as justification for applying Rule 6.05 to members of ISKCON: the state's interest in protecting the privacy of fairgoers. This interest is insufficient as long as Sankirtan is practiced in such a way that fairgoers who wish to avoid it are able to do so. The United States Supreme Court "has not generally allowed government to suppress speech [or, presumably, other activity protected by the First Amendment] solely to protect unwilling listeners from 'offensive expression unless substantial privacy interests have been invaded. * * * The 'privacy' interests of unwilling listeners are strongest in the home * * *. In public places an individual's privacy interests in avoiding offensive communications are generally thought insubstantial unless the person is deemed a member of a 'captive audience,' either because the person is literally not free to leave without great burden * * * or because the person is in a place where one cannot readily avoid exposure to the unwanted communication." L. Tribe, *American Constitutional Law*, 677, 677-78 n. 13 (1978).

In *Farmer v. Moses*, 232 F.Supp. 154, 162 (S.D.N.Y. 1964), the court considered the privacy rights of visitors to the New York World's Fair and stated: "[T]hose of us who pay the regular admission fee and attend the Fair cannot be totally insulated from our fellows, nor can we expect to be shielded from expressions or ideas which are unanticipated and unsolicited. An individual's right of privacy is of practical necessity limited by the rights of others when he leaves his home and ventures forth into public areas, even those which he must pay to enter."

> [People may be prevented] from blocking sidewalks, obstructing traffic, littering streets, committing assaults, or engaging in countless other forms of antisocial conduct. Such restraints on a solicitor's manner of conduct are characterized as after the fact prosecution, rather than a prior restraint on conduct. This type of sanction *after* the event assures consideration of the particular circumstances of the situation. Therefore, [a regulation should be aimed] at the *act* of obstruction itself rather than prohibiting solicitations on public sidewalks based on its desire to prevent obstruction and provide for the free flow of traffic.

Jones, "Solicitations-Charitable and Religious," 31 Baylor L. Rev. 53, 57 (1979). If the number of persons distributing and selling religious literature and receiving donations throughout the public areas of the fairgrounds becomes unmanageably large, a regulation to limit their number might be justified.[9] A place regulation less restrictive than Rule 6.05 might also be appropriate. For example, in *International Society for Krishna Consciousness, Inc. v. McAvey*, 450 F.Supp. 1265 (S.D.N.Y. 1978), the court refused to enjoin regulations establishing 10 areas at the World Trade Center in New York City within which only one ISKCON member at a time could

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[9] In connection with this we note that the parties have stipulated that "ISKCON, while unwilling to confine its religious activities to a booth, has indicated its willingness to submit to the regulation of its members in their circulation throughout the fairgrounds to proselytize, distribute, and sell literature, and solicit contributions."

solicit and prohibiting solicitations within 15 feet of certain designated places.[10]

Although we are limited by the record in this case, we recognize that an additional concern of defendants may involve the manner in which some members of ISKCON are reputed to practice Sankirtan. Like the problem of maintain-order, this problem can be solved by means less restrictive than confining ISKCON members' distribution, sales, and solicitation activities to a booth. Persons claiming to be members of ISKCON may be required to establish their identity and authority to act on ISKCON's behalf before being permitted to practice Sankirtan throughout the fairgrounds. *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940). Criminal and civil actions are available to remedy abuses such as fraud and battery in individual cases. *See International Society for Krishna Consciousness, Inc. v. Bowen*, 600 F.2d 667, 669-70 (7th Cir. 1979), *cert. den.*, 48 U.S.L.W. 3351 (1979).

In *Bowen*, the United States Court of Appeals for the Seventh Circuit affirmed the district court's order enjoining Indiana state fair officials from enforcing against members of ISKCON a policy of prohibiting peripatetic solicitation on the fairgrounds. We share the cogent expression of the First Amendment principle stated in these closing remarks of the court of appeals opinion (600 F.2d at 670-71):

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[10] The regulations upheld in *International Society for Krishna Consciousness, Inc. v. McAvey*, 450 F.Supp. 1265 (S.D.N.Y. 1978), are offered here only as an example. We do not intend to suggest that the same regulations would be appropriate at the Minnesota state fair. Regulations of the time, place, and manner of protected activity must be tailored to the forum in which such activity takes place. The state fair is not equivalent in character to the World Trade Center. Nor is it equivalent to an airport. *See, e.g., International Society for Krishna Consciousness, Inc. v. Eaves*, 601 F.2d 809 (5th Cir. 1979) (upholding a regulation requiring that the receipt of money by ISKCON members practicing Sankirtan at the Atlanta airport take place only at a booth).

> [W]e are not unmindful, as anyone cannot be who has travelled through a major airport facility in recent years, that practitioners of Sankirtan have been regarded as annoying and often downright irritating by those they approach. It is not, however, the cases in which the auditor is in agreement with that which is being expressed which reach the courts under the rubric of the First Amendment. Distaste for what is being expressed, and often absolute revulsion, appear to be the hallmarks of the exercise of First Amendment rights and probably are the necessary contexts in which the preservation of those rights can be firmly assured.

The order of the trial court is reversed and remanded with directions that the trial court amend its order, in conformity with this opinion, to enjoin defendants from enforcing Rule 6.05 against members of ISKCON who wish to practice Sankirtan at the state fair.[11]

Reversed and remanded with directions.

TODD, Justice (dissenting in part).

I respectfully dissent in part from the majority opinion because, in my view, the portion of Minnesota State Fair Rule 6.05 which limits the sale of materials and collection of funds to a rented booth constitutes a reasonable time, place, and manner restriction which may constitutionally be applied to plaintiff International Society for Krishna Consciousness, Inc. (ISKCON).

The majority recognizes that religious activity may be subject to reasonable and nondiscriminatory time, place, and

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[11] Since this writing, an opinion has been published in which the Supreme Court of Colorado, in a case virtually identical on its facts to this case, reached the same result as we reach here. *See International Society for Krishna Consciousness, Inc. v. Colorado State Fair and Industrial Exposition Commission*, —— Colo. ——, 610 P.2d 486 (1980).

manner restrictions. In evaluating the validity of this type of restriction, a court must determine whether the regulation furthers a substantial governmental interest which has no relation to the content of the first amendment expression involved. Additionally, the restriction on the first amendment activity must be no greater than is necessary to further that governmental interest. *United States v. O'Brien*, 391 U.S. 367, 377 (1968). An application of this test requires the balancing of the competing interests involved and a consideration of the nature of the forum. *Lehman v. City of Shaker Heights*, 418 U.S. 298, 302-303 (1974); *Grayned v. Rockford*, 408 U.S. 104, 115 (1972). In his concurring opinion in the case of *Niemotko v. Maryland*, 340 U.S. 268 (1951), Mr. Justice Frankfurter summarized the four questions which have been considered by the United States Supreme Court in balancing competing governmental and first amendment interests. They are: (1) What is the interest deemed to require the regulation of speech (or other first amendment activity)? (2) What is the method used to achieve such ends as a consequence of which public speech is constrained or barred? (3) What mode of speech is regulated? and (4) Where does the speaking which is regulated take place? 340 U.S. at 282; *see also, Intern. Society for Krishna Consciousness v. Evans*, 440 F. Supp. 414 (S.D. Ohio 1977).

The restriction under consideration in this case, Rule 6.05, as applied, requires that the activities of distribution and sale of literature and the solicitation and accepting of donations be confined to a rented booth. The majority concludes that Rule 6.05, in its entirety, may not constitutionally be applied to the religious activities of members of ISKCON because a substantial governmental interest for the restriction has not been shown and/or because the governmental interests in-

volved may be satisfied through less restrictive alternatives. However, in reaching this conclusion, the majority does not consider separately each activity which is restricted by the rule; namely, distribution, solicitation, sale, and collection of funds. Instead, the rule is analyzed as restricting a single form of activity. In my view, this constitutes an erroneous evaluation of the rule. Each activity which is sought to be regulated may serve a governmental interest to a greater or lesser degree and/or may serve a different governmental interest. Additionally, each component of the rule may have a different and/or greater or lesser impact on first amendment activity. Thus, in the balance, some of the restrictions may constitute reasonable time, place, and manner regulations while others may not.

I agree with the majority's conclusion that the portions of the rule which serve to restrict the activities of solicitation and distribution of religious literature may not validly be applied to the members of ISKCON. As was noted by the majority, Rule 6.05 does not seek to regulate proselytism by ISKCON members. There is no basis in the record for distinguishing the effect of proselytism from that of solicitation and distribution of religious literature on the claimed governmental interests involved herein. The state contends that the limitation of solicitation and distribution of literature to a rented booth serves a substantial state interest in maintaining public order and minimizing crowd confusion. However, it would appear that the acts of solicitation and distribution have no greater impact on the public order than does the act of proselytism. All three acts merely involve the communication of ideas. In fact, solicitation may be viewed as one form of proseslytism. Solicitation is an act, the purpose of which is to obtain support for the religion involved except that the

solicitor urges financial support rather than support for religious beliefs. The distribution of religious literature also constitutes a form of proselytism through the spreading of religious beliefs by means of written words rather than oral communications. The distribution of literature may have a lesser impact on order than oral proselytism because it may take less time. Additionally, since large amounts of literature are already collected by Fair patrons, the distribution of religious literature by ISKCON members does not have any great impact on any state concern for litter and the like. Thus, since the state expresses no substantial interest in regulating proselytism, it cannot validly claim to have any greater interest in regulating solicitation and distribution.

Therefore, these restrictions may not be justified as reasonable time, place, and manner restrictions since the acts of proselytism, solicitation, and distribution of religious literature are equally protected first amendment activities in this case. All three activities are religious activities which are required of ISKCON members. In fact, as plaintiffs urged at oral argument, these activities constitute the most important and central aspects of the Sankirtan ritual.

However, a different conclusion is required with respect to the regulation of the sales activities of and the collection of funds by members of ISKCON. Again, the state claims that the restriction of these activities to a booth serves a legitimate state interest in minimizing crowd confusion. The regulation serves this interest in a different way and to a greater extent than does the regulation of solicitation and distribution. Sales and collection activities engender additional confusion beyond that caused by solicitation and distribution because they involve acts of exchanging articles for money, fumbling for and dropping money, making change, etc. *See Intern. Soc.*

for Krishna Consciousness v. Eaves, 601 F.2d 809 (5th Cir. 1979). While these activities are not incompatible with other ongoing activities at the fairgrounds, they do serve to augment an already existing crowd control problem. The substantiality of the state's interest in this regard is obvious. The crowd at the fairgrounds is concentrated in about one third of the 125-acre fairgrounds. The average daily crowd is in excess of 150,000 people. Yet, the mere recitation of numbers from the stipulation does not portray the situation. Because of the large number of Fair patrons walking in the fairgrounds, there is confusion and congestion throughout the lanes of pedestrian traffic. Sales and collection can only serve to compound this problem. In determining that the state's interest in this regard is not substantial, the majority appears only to focus on the impact of ISKCON's activities on this problem. What the majority seems to forget is that its ruling today will allow for others engaged in first amendment activity to be excepted from the "booth rule." As plaintiffs conceded at oral argument, they stand on equal footing with other religious and political groups entitled to first amendment protection. The effect of unrestricted sales and collection on the crowd control problem at the Minnesota State Fair may, thus, readily be seen.[1]

Specifically with respect to the activities of members of ISKCON, the restriction of its sales and collection activities to a booth also serves a substantial and legitimate state interest in protecting Fair patrons from fraud, misrepresentation, and other acts of misconduct. At the 1977 Minnesota State

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[1] *See Intern. Soc. for Krishna Consciousness v. Eaves,* 601 F. 2d 809 (5th Cir. 1979), *Edwards v. Maryland State Fair and Agricultural Society,* 476 F. Supp. 153 (D. Md. 1979), *Hynes v. Metropolitan Government of Nashville and Davidson County,* 478 F. Supp. 9 (M. D. Tenn. 1979), *Int'l. Soc., Krishna Con., Inc. v. McAvey,* 450 F. Supp. 1265 (S. D. N. Y. 1978), *Inter. Soc. for Krishna Consciousness v. Evans,* 440 F. Supp. 414 (S. D. Ohio 1977).

Fair, ISKCON members were permitted by court order to distribute materials and collect donations but were denied the right to sell items away from a booth. As a result of ISKCON activity at this Fair, the Fair Staff received 234 complaints, some of which indicated that ISKCON members violated the court order by selling items outside of a rental booth under the guise of collecting donations. These complaints also show that members of ISKCON misrepresented their identities and purposes when requesting funds[2] and also solicited minors. In support of its motion for summary judgment, the state submitted affidavits which verified this misconduct. By restricting the sales and collections activities of ISKCON members to a rented booth, the state's interest in protecting fairgoers from such acts of misconduct would be served because such a rule would require ISKCON members to clearly identify themselves and their purpose and would enable the state to adequately police their activities to ensure that the members are not engaged in such acts of misconduct.[3]

The method of regulation in this case is impartial and nondiscriminatory. The rule is carefully drawn so that Fair officials can exercise no discretion when confining collection and sales activities to a booth. Fair officials cannot arbitrarily

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[2] The complaints indicated that ISKCON members stated to fairgoers that they were representing the Department of Natural Resources or the State Fair or were collecting funds for needy children or agricultural schools.

[3] In footnote 8 of its opinion, the majority alludes to the claimed state interest in protecting the privacy of fairgoers and suggests that this interest is never relevant in the context of a state fair, citing *Farmer v. Moses*, 232 F. Supp. 154 (S. D. N. Y. 1964). While I find that this claimed interest is not substantially served by the regulation of sales and collection in this case, I cannot agree that the privacy interests of fairgoers may never be balanced against the interests of those engaged in first amendment activities in determining the reasonableness of a time, place, and manner regulation. *See Hynes v. Metropolitan Government of Nashville and Davidson County*, 478 F. Supp. 9 (M. D. Tenn. 1979), *Int'l. Soc., Krishna Con., Inc. v. McAvey*, 450 F. Supp. 1265 (S. D. N. Y. 1978).

determine that some exhibitors are free to roam the fairgrounds while others are not. Nor is there any discretion given in the determination of who is entitled to rent booth space. Booths at the Fair are rented on a first-come, first-serve basis. Furthermore, the regulation is only minimally restrictive. It does not serve to prohibit any first amendment activity. The rule only limits that activity to a rented booth. Finally, the regulation of sales and collection only restricts non-communicative aspects of any exhibitor's activity. It could not be more content neutral.

Thus, when the rule and the state's substantial interests in its enforcement are weighed against ISKCON's interests in this case, the reasonableness of the rule as a time, place, and manner regulation becomes apparent. Members of ISKCON have an undeniably protected interest in engaging in acts of sales and collection of funds since these are acts which are required as a part of the Sankirtan ritual. However, as plaintiffs stated at oral argument, these activities do not constitute the most central aspects of the ritual as do distribution of literature and proselytism. Thus, the regulation of sales and collection has a lesser impact on the religious activities of ISKCON members than would the regulation of distribution, proselytism, etc. Furthermore, the impact of the regulation on ISKCON activities is not great since the regulation is merely restrictive rather than prohibitive. Contrary to the statement in the majority opinion, there is nothing in the record which establishes that ISKCON members are required to perform any and all aspects of the Sankirtan ritual in a peripatetic manner. Therefore, although the regulation of sales and collection has some impact on ISKCON's religious activities, the impact is not great when compared with the substantial state interests served by the rule.

The majority concludes that even if the state has a substantial interest in enforcing its rule against ISKCON mem-

bers, these interests may be served through less restrictive alternatives and, thus, the rule may not be upheld as reasonable. The majority suggests that the state's interests may be served through prohibitions of specific acts of misconduct, limitations on the numbers of those selling materials and collecting funds throughout the fairgrounds, requirements concerning identification of ISKCON members, and through the bringing of civil and criminal actions for fraud and battery. However, in the context of the State Fair, these suggested alternatives could not viably be implemented and would only serve to increase the existing crowd control problems. All of the suggested alternatives would require Fair officials to police, in an individualized manner, specific acts of misconduct. The ability to police such activities is severely restricted if not made impossible because the fairgrounds is a large, overly-crowded area. Furthermore, the enforcing of a partial ban would entail the checking of credentials and other similar acts which would increase crowd confusion and congestion rather than ameliorate it. Additionally, all of the less restrictive alternatives would only serve to frustrate the legitimate state interest of promulgating a rule which is effective and easily enforceable. Thus, I cannot conclude that the restriction of sales and collection to a rented booth is anything less than a reasonable time, place, and manner regulation.

For the foregoing reasons, I would uphold Rule 6.05 to the extent that it restricts the sales of materials and the collection of funds to a rented booth.

SHERAN, Chief Justice (dissenting).

I agree with Mr. Justice Todd.

SCOTT, Justice (dissenting).

I join in the dissent of Justice Todd.

AMDAHL, J., not having been a member of this court at the time of the argument and submission, took no part in the consideration or decision of this case.

APPENDIX B

STATE OF MINNESOTA
County of Ramsey

DISTRICT COURT
Second Judicial District

File No. 421843

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., and JOSEPH BECA, on behalf of themselves and all INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS members,

Plaintiffs,

vs.

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, The Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,

Defendants.

ORDER

The above-entitled matter came duly on for hearing before the undersigned, The Honorable J. Jerome Plunkett, Judge of Ramsey County District Court, at Special Term on August 3, 1978, upon plaintiffs' and defendants' cross motions for summary judgment. James A. Payne appeared as attorney for plaintiffs. Kent G. Harbison, Special Assistant Attorney General, and William P. Marshall, Special Assistant Attorney General, appeared as attorneys for defendants.

Upon the oral argument of counsel, the memoranda and attached affidavits submitted by plaintiffs and defendants, respectively, and upon all of the files and records of the proceedings herein,

IT IS HEREBY ORDERED that plaintiffs' motion for summary judgment is in all respects denied. Defendants' motion for summary judgment is in all respects granted.

IT IS FURTHER ORDERED that plaintiffs are prohibited from:

1) Engaging in any distribution of materials (e.g., books, flowers, flags, incense, artifacts, etc.) throughout the fairgrounds, except from rented booth space;

2) Engaging in any sales or solicitation for monetary donations throughout the fairgrounds, except from rented booth space;

However, plaintiffs are permitted to:

Roam throughout those areas of the fairgrounds generally open to the public for the purpose of discussing with others their religious beliefs.

There is hereto attached a memorandum which is a part of this order.

J. JEROME PLUNKETT
Judge of District Court

Dated: This 18th day of August, 1978.

MEMORANDUM

The issue presented in this case is one of first impression in the State of Minnesota.

The facts in this case are stipulated by counsel. The Defendant Agricultural Society, which operates the State Fair in Minnesota, has a Rule 6.05 which prohibits the sale or distribution of any merchandise, including printed or written

material, except under a license issued by the society and from a duly licensed location within the fairgrounds. Minnesota Statute 37.16 is the authority under which the Agricultural Society has promulgated said rule.

The plaintiffs contend that Rule 6.05 is unconstitutionally invalid as it applies to them. The defendants contend that said rule is a reasonable limitation upon the plaintiffs and others in using the grounds at the State Fair.

The issue presented is one of free speech and the exercise of the religious rights of the plaintiffs. The plaintiffs contend that their religious belief, known as Sankirtan, consists of going out into public places to disseminate or sell religious literature and to solicit contributions to support their cause. Rule 6.05 would limit the plaintiffs to the exercise of its rights to "booth" space as is required of all exhibitors at the State Fair. The constitutional question is a close one and the Court can only find Rule 6.05 to be valid if it concludes that said rule is reasonable as to time and place as it applies to the plaintiffs.

It appears that the Federal District Court in Ohio in 1977 in the case of *ISKCON v. Evans*, 440 F.Supp. 414 (S.D. Ohio, 1977), dealt with facts almost identical to the present case. The Ohio Fair Board had a rule similar to Rule 6.05 which restricted plaintiffs' activities to booth space at the Ohio State Fair. The Federal Court held that the state's interest in providing all fair goers and concessionaires with adequate and equal access to each other and in providing a minimum of congestion on the fairgrounds was a valid constitutional limitation upon the plaintiffs. This Court is impressed by the Federal Court's decision in Ohio and believes that the rationale of said case and its holding should be applicable here.

In Minnesota there are over 1400 exhibitors at the State Fair seeking to communicate various information. Some form

of time, place and manner restriction is clearly required if the free speech rights of each of these exhibitors are to be protected. In addition the public has a right of access to the several communications which must be protected as well.

The Court, therefore, has denied the plaintiffs' motion for summary judgment and has granted the defendants' motion for summary judgment, and has entered its aforesaid order in this case.

J. JEROME PLUNKETT
Judge of District Court

Dated: This 18th day of August, 1978.

No. 80-795

IN THE

Supreme Court of the United States

October Term, 1980

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, the Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,

Petitioners,

vs.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., and JOSEPH BECA, on behalf of themselves and THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS members,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

JOINT APPENDIX

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DOCKET ENTRIES

International Society for Krishna Consciousness
v. Michael Heffron, et al
Ramsey County District Court
File No. 421846
Civil Register

8-26-77—Summons and Complaint for Declaratory and Injunctive Relief
Affidavit of James Payne
Motion for Temporary Restraining Order,
Motion for Preliminary Injunction,
Affidavit of Joseph Beca, a/k/a
Naikatma, Memorandum filed
Order, Abramson, Judgment for Temporary Restraining Order filed
Cash bond $150 received from International Society for Krishna Consciousness, Inc.

8-30-77—Affidavit of Service of Order, etc. filed

1-14-78—Deposition of Joseph Beca, a/k/a Naikatma

3-3-78—Plaintiff's Request for Production of Documents with Affidavit of Service filed

7-31-78—Notice and Cross Motion by Defendant filed

7-31-78—Stipulation of Facts, also, Defendant's Memorandum, Affidavit of Service, attached

7-31-78—Plaintiff's Notice of Motion and Motion and Memorandum filed

8-2-78—Affidavit of David C. Ewert filed

8-7-78—Plaintiff's Reply Brief filed

8-10-78—Affidavits of Tom Kerr, Joseph Beca filed

8-18-78—Order, Plunkett, J. filed

8-24-78—Judgment Roll made and filed, Summary Judgment entered in favor of Defendants.
No costs.
11-16-78—Affidavit of Service, Notice of Appeal filed
$500 Bond on Appeal with Empire Fire and Marine Insurance Company filed in Bond File No. 8899
Return to Supreme Court
7-13-79—File, et al to Supreme Court, Receipt filed
7-23-79—Receipt returned from Supreme Court and filed
12-12-80—Above file and contents returned from Supreme Court and filed. Copy to Supreme Court.
12-11-80—Order and Mandate from Supreme Court filed
12-24-80—Satisfaction of Judgment filed
2-2-81—Letter 1-29-81 signed Kent G. Harbison, Special Assistant Attorney General, filed
2-10-81—Index filed and file and contents to U. S. Supreme Court

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SUMMONS

THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Plaintiffs' attorneys an Answer to the Complaint which is herewith served upon you within twenty (20) days after service of this Summons upon you, exclusive of the date of such service. If you fail to do so, judgment by default will be taken against you for the relief prayed for in the Complaint.

DAYTON, HERMAN &
GRAHAM
By /s/ JAMES A. PAYNE
Attorney for the Plaintiff
800 Midland Bank Building
Minneapolis, Minnesota 55401
(612) 339-7633

(Title of Cause.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This is a civil rights action brought to enforce the rights of Plaintiffs under the First and Fourteenth Amendments of the United States Constitution, for declaratory and injunctive relief pursuant to 42 U.S.C. §1983 and the Minnesota Declaratory Judgment Act, Minn. Stat. §555.01. This action is brought by the International Society for Krishna Consciousness, Inc. to enjoin enforcement of a standardless licensing law (Minnesota State Fair Rule 6.05) which is unconstitutional both on its face and as applied to the distribution and sale of religious literature and the solicitation of donations by a religious group in those portions of the Minnesota State Fair Grounds open to the general public. Plaintiffs also seek to enjoin the exercise of any general regulatory discretion vested in the Defendants by state law (Minn. Stat. Ch. 37) to manage the affairs of the Minnesota State Fair in a manner which precludes Plaintiffs from engaging in protected religious activities at the State Fair. The law at issue is defective because it is standardless, vague and overbroad, vesting discretion in officials to grant or deny licenses for the exercise of First Amendment rights, without definite, narrow and objective standards to govern such discretion; because it lacks definition; and because it lacks adequate due process procedures respecting the application, consideration, denial, and revocation of licenses. Plaintiffs seek temporary injunctive relief so that they may proceed with the proselytizing and missionary activities which are the very mainstay and lifeblood of their religious movement.

II. PARTIES

Plaintiffs

2. International Society for Krishna Consciousness, Inc. (ISKCON) is an international religious society which espouses the religious and missionary views of Krishna Consciousness. It is duly organized as a non-profit religious corporation under the laws of the State of Minnesota and under the laws of the State of New York, and maintains temples and schools in cities throughout the United States and the world, including Minneapolis, Boston, Atlanta, Washington, D.C., New York, Los Angeles, Montreal, Paris, Singapore, and Tokyo. ISKCON is described by members of the judiciary having reviewed the organization in *ISKCON v. Conlisk*, 374 Fed. Supp. 1010 (W.D. Ill. 1973) and *ISKCON v. New Orleans*, 347 Fed. Supp. 945 (E.D. La. 1972).

3. Joseph Beca is the head of the Minneapolis temple of ISKCON. He has been a devotee of the religion for four years and has been ordained as a priest, or Brahmin, for two years. Joseph Beca whose religious name is Naikatma, performs religious missionary work in public places and wishes to continue doing so, including the areas of the Minnesota State Fair Grounds open to the public.

Defendants

4. Michael Heffron is the Secretary of the Board of Governors of the Minnesota State Agricultural Society and Manager of the Minnesota State Fair, and as such is the person charged with supervising all activities at the Minnesota State Fair and through his subordinates with implementation and enforcement of all State Fair rules and regulations.

5. Harveydale Maruska is the President of the Board of Governors of the Minnesota State Agricultural Society and, with Michael Heffron, is charged with appointing peace

officers who enforce all rules, regulations, laws, statutes, and ordinances on the Minnesota State Fair Grounds, including the arrest of persons who violate such laws. Minn. Stat. §37.20.

6. Warren Spannaus is the Attorney General of the State of Minnesota, and, as such, designates a subordinate to act as attorney to the Board of Governors of the Minnesota Agricultural Society; that attorney is charged with securing the prosecution of those arrested at the Minnesota State Fair Grounds for violations of law, ordinance, statute, rule or regulation.

7. The Board of Governors of the Minnesota Agricultural Society is charged by law with the administration and regulation of all activities of the Minnesota State Fair, and, through its subordinates, enforces all rules, regulations, laws, statutes, and ordinances at the Fair.

8. All defendants are sued individually and in their official capacities. The acts and practices of the defendants and their agents, as herein alleged, were performed under color of law (Minn. Stat. Ch. 37) and, therefore, constitute actions of the state within the meaning of the Fourteenth Amendment to the United States Constitution.

III. FACTS

9. The Hare Krishna religion, as ISKCON is commonly known, imposes on its members the duty to perform a religious ritual known as Sankirtan, which consists of disseminating and selling religious tracts and soliciting contributions for their religious activities in public places. Sankirtan is directed to spreading religious truth as it is known to the Hare Krishna religion, attracting new members, and supporting ISKCON's religious activities. Donations and book sales are the very lifeblood and principal means of support of this movement.

10. ISKCON's devotees have expressed a desire to perform Sankirtan in those portions of the Minnesota State Fair Grounds open to the general public during the 1977 Minnesota State Fair. They seek only to distribute religious literature, solicit donations, and proselytize their religious beliefs and do not seek to dance, chant, or to engage in any other potentially disruptive or disorderly conduct.

11. ISKCON's devotees have tried to allay any fears Defendants might have that their religious activity might be disruptive to normal Fair activities by offering to wear identifying name tags at all times, to limit the number of devotees at the State Fair Grounds, to approach only consenting patrons, to refrain from engaging Fair patrons in conversation near entrances or exits to buildings or exhibits or in areas where there are lines or queues, and to identify themselves to Fair officials, including police officials.

12. The Minnesota State Fair Grounds are owned by the State of Minnesota and operated by the Minnesota State Agricultural Society (Agricultural Society). The Agricultural Society exercises unique power over the State Fair Grounds, its Secretary and President being authorized to appoint peace officers to enforce all applicable state and local ordinances in addition to all of the rules and regulations promulgated by the Agricultural Society. Those arrested for violation of any law or regulation while attending the Minnesota State Fair are prosecuted by referral from a subordinate of the Attorney General's Office. The State Fair is virtually a public thoroughfare for thousands of persons annually, attracting fairgoers from all parts of the state and beyond the state.

13. Plaintiffs are informed by Defendants that Defendants will prevent them from selling religious literature and

from soliciting religious donations throughout the Minnesota State Fair Grounds. Plaintiffs will be subject to arrest, prosecution and/or removal from the State Fair Grounds.

14. Rule 6.05 of the Rules and Regulations of the Minnesota State Fair provides:

> Sale or distribution of any merchandise, including printed or written material except under license issued for the Society and/or from a duly licensed location shall be a misdemeanor.

15. Minnesota Statutes §37.20 provides that constables or deputies appointed by the Secretary or the President of the Agricultural Society may "without warrant, arrest any person found violating any law of the State, or any rule, regulation, by-law, or ordinance of the Society, and may summarily remove the persons and property of such offenders from the grounds . . ."

16. Rule 6.05 of the Minnesota State Fair Rules and Regulations on its face and as applied to prohibit the distribution and sale of religious literature by members of a religious organization, without a license for which no definite standards are specified, without adequate due process procedures respecting the denial and revocation of licenses, and because arbitrary and overbroad restrictions are included respecting the relegation of Plaintiffs to a licensed booth, substantively abridges the exercise of freedoms of speech and press, arbitrarily deprives persons of their liberty and property without due process of law, capriciously denies the equal protection of laws, and is vague, ambiguous and overbroad, all in violation of the First and Fourteenth Amendments to the United States Constitution.

17. Minnesota Statutes §37.20 and the general regulatory discretion vested in the defendants by state law abridge the

First and Fourteenth Amendments to the United States Constitution by illegally delimiting the ability of Plaintiffs to carry out their religious mission.

IV. EQUITY AND IRREPARABLE INJURY

18. There is between the parties actual controversy as herein before set forth. The Plaintiffs are suffering irreparable injury and are threatened with irreparable harm in the future by reason of the acts herein complained of and a substantial loss or impairment of freedom of expression will occur and will continue to occur so long as Defendants' conduct continues. Plaintiffs will be harassed and intimidated by defendants or their agents utilizing the regulation at issue and the general discretionary power of the Agricultural Society so long as Plaintiffs attempt to proselytize at the Minnesota State Fair. Furthermore, a chilling effect upon the exercise of First Amendment rights may derive from the fact of threats of prosecution unaffected by prospects of its success or failure.

19. Plaintiffs have no plain, adequate or complete remedy to speedily redress the wrongs herein complained of other than this action. No other remedy for which Plaintiffs might apply brings substantial relief. The award of damages to Plaintiffs is not adequate to protect them from the continuing threatening conduct of Defendants and the chilling effect it has upon the exercise of Plaintiffs' constitutional rights.

V. RELIEF

Plaintiffs pray that this Court:

1. Declare that Minnesota State Agricultural Society Rule No. 6.05 on its face and as applied to prohibit distribution and sale of Plaintiffs' religious literature and solicitation of donations for religious purposes by members of a religious organization abridges the free exercise of religion

and the freedoms of speech and press, contrary to the First and Fourteenth Amendments to the United States Constitution.

2. Declare that the discretionary powers of the Minnesota State Agricultural Society, its agents and employees when exercised to prohibit the distribution and sale of Plaintiffs' religious literature by members of a religious organization abridges the free exercise of religion and the freedoms of speech and press, contrary to the First and Fourteenth Amendments of the United States Constitution.

3. Temporarily and permanently enjoin the Defendants from arresting Plaintiffs for solicitation for religious purposes or for sale of religious literature or for proselytizing their religion and further enjoin the Defendants from preventing the Plaintiffs from conducting these activities on those portions of the Minnesota State Fair Grounds open to the public; and

4. Grant Plaintiffs attorneys' fees, costs and such other and further relief as may be equitable and just.

DATED: August 24, 1977.

(Caption)

AFFIDAVIT OF JOSEPH BECA,
also known as NAIKATMA

State of Minnesota
County of Hennepin—ss.

I, Joseph Beca, also known as Naikatma, being duly sworn, depose and say:

1. I am a named plaintiff herein, and am the leader of the Minneapolis temple of the International Society for Krishna Consciousness, Inc. (hereinafter "ISKCON"), also known as the "Hare Krishna religion." I have been a devotee of the religion for four years and was initiated in 1973. Naikatma

is my spiritual name and the name I am known by; Joseph Beca is my legal name. My full time life's work is as a Krishna Consciousness missionary.

2. I make this affidavit in support of the Complaint, Motion for Temporary Injunction and Motion for Preliminary Injunction in the above-captioned matter.

3. The International Society for Krishna Consciousness is an international religious society which espouses the religious and missionary beliefs of Hinduism as expressed by the Hindu denomination, Krishna Consciousness. Krishna Consciousness is the branch of Hinduism which believes in the absolute supremacy of a single God or Deity (in Sanskrit "Krishna"). Moreover, the Hindu scriptures are taken more literally by Krishna Consciousness than other Hindu sects. The antecedents of this monotheistic fundamentalist Hindu sect are ancient. ISKCON is duly organized as a non-profit religious corporation under the laws of the State of New York and under the laws of the State of Minnesota. The Society maintains temples and schools in cities throughout the United States and the world, including Minneapolis, San Francisco, Montreal, Paris, Singapore, Tokyo, and India. ISKCON is more fully described in *ISKCON v. Conlisk*, 374 Fed. Supp. 1010 (W.D. Ill. 1973) and *ISKCON v. New Orleans*, 347 Fed. Supp. 945 (E.D. La. 1972).

4. Hinduism as expressed by Krishna Consciousness imposes on its members the duty to perform a religious ritual known as Sankirtan which consists of going out into public places and disseminating and selling religious literature and soliciting contributions to support Krishna Consciousness. Sankirtan is directed to spreading religious truth as it is known to Krishna Consciousness, attracting new members, and supporting ISKCON's religious activities. Donations and

book sales are the very lifeblood and principle means of support of this religious movement.

5. I and the other ISKCON devotees have expressed our desire to perform Sankirtan in those portions of the Minnesota State Fair Grounds open to the general public during the 1977 Minnesota State Fair. We seek only to distribute literature and solicit donations at the Fair, and to discuss our religious beliefs with Fair patrons; we do not seek to dance, chant, or to engage in any disruptive conduct.

6. The Minnesota State Fair is run by the Minnesota State Agricultural Society, a public corporation created by statute. The Agricultural Society has promulgated rules and regulations governing conduct at the Fair, and Rule 6.05 prohibits the sale or distribution of any merchandise, including printed or written material, without a license from the Agricultural Society and/or from a duly licensed location. Violators of Rule 6.05 will be prosecuted as for a misdemeanor. A copy of Rule 6.05 is attached hereto.

7. Thousands and thousands of people from Minnesota, surrounding states, other parts of the country, and even international travelers visit the Minnesota State Fair each year. Large public gatherings such as this constitute the kind of forum where devotees may most readily perform Sankirtan, for people in the position of fairgoers are particularly receptive to receiving books and discussing Krishna Consciousness. This is because people in a recreational situation such as a day trip to the Fair have substantial time to spare that would not be available to them on a normal work day and because fairgoers are open to new ideas and different cultural or educational experiences. Furthermore, there is a constant turnover of people passing through the thoroughfares of the Fair Grounds and therefore we are able to approach many people

who have never been met by devotees before. Our many publications, printed in English and other languages, are distributed to fairgoers who subsequently return to other states and rural areas of this state, thus widely spreading the message of Krishna Consciousness.

8. While the other devotees and I find the public areas of the State Fair Grounds a highly appropriate location for Sankirtan, we run the risk of expulsion or arrest and prosecution if we go there to discuss Krishna Consciousness, to sell our religious literature and to solicit donations to further our cause.

9. It is absolutely vital to Sankirtan that we be allowed to circulate freely among fairgoers, for a small booth provides patrons little opportunity to meet devotees. It is not our practice to detain patrons or to talk with them unless they express a willingness to listen.

10. I would like to take the opportunity of this affidavit to further describe our religious movement.

11. Krishna Consciousness' scriptual foundations are the *Vedas*, ancient Hindu religious texts dating to 3000 B.C. *Veda* means knowledge descending from the Supreme Lord or Godhead to man, enlightening souls fallen from the spiritual world, ignorant of man's original spiritual nature and eternal relationship with God.

12. In previous millenniums, intelligence, memory and all other intellectual functions were so highly developed and refined that there was no necessity of writing down Vedic knowledge. Therefore, Vedic knowledge was transmitted by oral tradition. However, at the beginning of Kali Yuga, 5,000 years ago, the current age of quarrel, the great sage Vyasadeva (known as the "literary incarnation of God") foreseeing the degradation of human society and religious principles, compiled and recorded the vast body of Vedic knowledge.

13. The principal Vedic scriptures include *Upanishads, Mahabharata, Bhagavad-gita, Vedanta-sutra, Srimad Bhagavatam,* and *Sri-Caitanya-caritamatra.* The powerful influence of the Vedic scriptures has, within the last two centuries, expanded beyond the borders of India to the West, strongly influencing generations of philosophers and theologians.

14. These texts comprise the words of Sri Krsna (a name of God meaning "the all attractive one") and completely delineate the absolute truth in its five aspects, God, the living entity, nature, time and activity. It is established that Krsna has supreme and ultimate control over all of the material universe, its entities and events.

15. The eternal living entities (souls) are originally from the spiritual world (Vaikuntha). At some point in time, however, a soul may fall from the spiritual world into the material world. When he enters the material world, he assumes a material form (the "body" as we know it). According to his pious or impious activities, he is elevated or degraded at the time of leaving his present body, to a more developed or less developed form. By principle of "karma" one is subject to the punishment or reward of one's actions—as in the Bible it is said "as ye sow, so shall ye reap." According to one's karma, at death, one moves on to a higher or lower developed body.

16. Transference from one material body to another, ad infinitum, is called "transmigration" or, more popularly, "reincarnation." In his conditioned state in the material world, the fallen soul identifies his eternal spiritual self with the transitory material body. This illusion, or false identification, is called "maya," "that which is not." While in this conditioned state, the soul is forced to act in different ways by the influence of the three modes (material qualities) called satva (goodness), rajas (passion) and tamas (ignorance). By com-

plex, labyrinthian, interpenetrating of desire, karma and modes, the living entity is trapped in an endless succession of rebirths.

17. This existence in the material world is very painful and full of suffering. The Vedas teach that the goal of human existence is to somehow escape this endless confinement in the prison-like material world and, concomitantly, be released from all material suffering. This liberation is called "mukti." The process of escape is receiving Vedic knowledge from a bona fide guru, who can impart the Vedic message to the suffering living entity. The spiritual master's function is to engage the living entity in loving devotional service to the Lord.

18. When the living being's activities are spiritualized, that is, becomes fixed upon the service of the Lord, then he becomes eligible to leave the transitory materialistic world, and through this perfect self-transcendence and enlightenment, re-enter into the eternal and blissful kingdom of God. This is the ultimate purpose of life.

19. Although thousands of different names for God are given in the Vedas, "Krishna" means "the all-attractive One" and is said to include them all. The term "Krishna Consciousness" is the essence of the Vedic religion. Krishna Consciousness is also known as "Bhakti yoga." Yoga means "to link with God" and "Bhakti" means "devotion." Krishna Consciousness is therefore the process of reuniting with God through pure devotional love.

20. Our principles include the following:

(a) By sincerely cultivating a bona fide spiritual science, we can be free from anxiety and come to a state of pure, unending, blissful consciousness in this lifetime.

(b) We are not our bodies but eternal spirit souls, parts and parcels of God (Krsna). As such, we are all brothers, and Krsna is ultimately our common father.

(c) Krsna is eternal, all-knowing, omnipresent, all-powerful, and all-attractive. He is the seed-giving father of all living beings, and He is the sustaining energy of the entire cosmic creation.

(d) The Absolute Truth is contained in the *Vedas*, the oldest scriptures in the world. The essence of the *Vedas* is found in the Bhagavad-gita, a literal record of Krsna's words.

(e) We should learn the Vedic knowledge from a genuine spiritual master—one who has no selfish motives and whose mind is firmly fixed on Krsna.

(f) Before we eat, we should offer to the Lord the food that sustains us. Then Krsna becomes the offering and purifies us.

(g) We should perform all our actions as offerings to Krsna and do nothing for our own sense gratification.

(h) The recommended means for achieving the mature stage of love of God in this age of Kali, or quarrel, is to chant the holy names of the Lord. The easiest method is to change the Hare Krsna mantra:

Hare Krsna, Hare Krsna, Krsna, Krsna,
Hare Hare Rama, Hare Rama, Rama Rama, Hare Hare.

21. The ancient *Vedas* (scriptures) predict that the self same Sri Krsna who spoke the Bhagavad-gita and other scriptures would again appear in this age to propagate the same eternal principles of religion. In the *Srimad Bhagavatam* (10:5:32), it is stated, "In the Kali Yuga (present age) the Supreme Lord comes as One who always chants the name of Sri Krsna Who is Sri Krsna Himself and whose complexion is yellow."

22. That incarnation five hundred years ago in West Bengal, India, was in the form of Lord Caitanya Mahaprabhu, and it was He who revitalized God or Krsna consciousness and actuated the Sankirtan Movement, which is known around the world as the International Society for Krishna Consciousness or Hare Krishna movement. Lord Caitanya taught by word or by example how one can perfectly live according to the principles of the Vedic scriptures. He was the Supreme Lord acting as a devotee to set the perfect example of spiritual life for all men everywhere. He traveled throughout India chanting and preaching his message of love of God and he instructed all of his followers to do likewise. Lord Caitanya taught that public congregational chanting of the names of God and the public broadcasting and publishing of the glories of God is the only effective means of revival of Krishna Consciousness in the present age. This process of glorification is called "sankirtan yajna" in Sanskrit, or the sacrifice (yajna) of broadcasting the name and fame of the Lord. All of his men were required to canvas door to door every day. Indeed, he said, "you must go all over the world, village to village, town to town, and enlighten everyone in the matter of spiritual life." This was His divine command. Therefore, every sincere follower of Lord Caitanya must do his part to carry out his mission.

23. Sankirtana-yajna is described in the purport to *Srimad-Bhagavatam*, Canto 5, Chapter 19, page 260, as:

> "The mission of the Krsna consciousness movement. *Caitanya-Bhagavata* confirms this as follows: 'One should not desire to be elevated even to a place in the heavenly planetary systems if it has no propaganda to expand the glories of the Supreme Personality of Godhead, no trace of Vaisnavas, pure devotees of the Lord, and no festivals

for spreading Krsna consciousness.' . . . Similarly, in Caitanya-caritamrta, Krsnadasa Kaviraia Goswami says that since Sri Caitanva Mahaprabhu is the inaugurator of the sankirtana movement, anyone who performs sankirtana to please the Lord is very, very glorious. Such a person has perfect intelligence, whereas others are in the ignorance of material existence. Of all the sacrifices mentioned in the Vedic literatures, the performance of sankirtana-yajna is most exalted."

24. It was in this spirit and under Sri Caitanya's mandate that the Sankirtan movement was brought to the Western world eleven years ago by His Divine Grace A.C. Bhaktivedanta Swami Prabhupada, our spiritual master, who is eleventh in line of disciplic succession from Sri Caitanya. In pursuing the mission of Sri Caitanya, Srila Prabhupada has instructed us to go wherever people publicly gather, collect alms, and distribute literature describing the glories of God. Therefore, the profuse distribution of books has become our life and soul.

25. The International Society for Krishna Consciousness has nearly one hundred temples, ashrams (spiritual centers), farm communities and schools spread over six continents, and is comprised of several thousand full-time members. All the centers are bound by identical guidelines for worship and daily activities that are strictly based upon the authority of the Vedic scriptures.

26. In contrast to the complexity and anxiety of modern life, the Krishna Conscious life is based strictly upon the Vedic principle of "simple living and and high thinking." Meat eating, non-marital non-procreational sex, intoxication and drugs, and gambling are absolutely prohibited. Devotees rise very early, at 4:00 a.m., and spend the morning hours in meditation and study, attending classes in the profound and practical

scriptures of Bhagavad-gita and Srimad-Bhagavatam. Srila Prabhupada's translations and commentary of these Vedic classics are our lanterns. In the morning hours, the devotees also meditate on the Maha-Mantra, composed of the following transcendental names of God: Hare Krsna, Hare Krsna, Krsna Krsna, Hare Hare/Hare Rama, Hare Rama, Rama Rama, Hare Hare. Vedic literature states that this meditation is the simplest and most sublime process for reviving God consciousness in the current materialistic age. During the day, the main activity is preaching Krsna consciousness. Many devotees go out to public places to distribute the Society's books and its official journal, Back to Godhead magazine, which has a monthly circulation of more than a million copies in some languages.

27. Once a year, many members of ISKCON journey to the Society's international headquarters at Sridhama Mayaput, West Bengal, India. Srila Prabhupada has proposed establishing an Institute of Vedic Studies at this site, where visitors from all over the world can learn about Vedic culture and witness it in practice. Presently the worldcenter includes a large facility for massive distribution of food to thousands of needy families. Another major Indian center is in Vrndavana, the birthplace of Lord Krsna, where the Society has recently opened the magnificent Krsna-Balarama Temple and International Guest House.

28. In the United States and other countries, ISKCON has established a series of rural asramas, each a model of Vedic agrarian life. Avoiding modern farm machinery as far as possible, they demonstrate that a human being need not depend on the artificial economy of the city. He can live peacefully and simply in the country while pursuing a spiritual life.

29. In 1972, His Divine Grace introduced the Vedic system of primary and secondary education in the West by founding the Gurukula school in Dallas, Texas. The school began with three children in 1972, and by the beginning of 1975 the enrollment had grown to one hundred fifty. Taught by academically qualified members of the Society, the children learn Sanskrit language and Vedic culture as well as the usual subjects like English, math and history. The unique feature of Gurukula is that the entire educational process is centered around the goal of self-realization. In his book, *Hare Krishna and the Counter-culture*, (John Wiley and Sons, Inc.), Dr. Stillson Judah, Professor of History of Religion, Graduate Theological Union in Berkeley, California, says, "The student is taught to be kind to everyone, not to be quarrelsome, to be charitable, clean, benevolent, self-controlled, completely devoted to God and free from material desires."

30. People from India who visit our centers often express their appreciation that the principles of Vedic religion and culture have not been compromised in the ISKCON movement, as had been done by other sects purporting to be based on Vedic authority. In fact, most American scholars who study the Krishna Consciousness movement acknowledge that the Krishna Consciousness movement is the first successful attempt to transmit authentic Vedic culture to the West.

31. The International Society for Krishna Consciousness was formed in America as a vehicle to teach true Vedic spirituality to the Western World. As mentioned, Vedic knowledge traditionally is preserved, passed down and disseminated by disciplic successions. Srila Prabhupada, acting on the teaching of his spiritual master, determined to bring the gift of Vedic culture to the West. He sailed to America from India in 1965, and after much personal struggle, finally established the first

Krishna Consciousness temple in New York City in 1966. Since then, by his dedicated efforts and the hard work of his disciples, the movement has spread all over the world.

32. ISKCON's purpose is two-fold. First, it provides a living situation in which devotees can peacefully execute their spiritual life. Secondly, it seeks to make this knowledge available to as wide a number and cross-section of the population as possible. It is a devotee's duty and sincere desire to benedict everyone, regardless of race, creed, color or nationality, with this sublime wisdom of Vedic knowledge that leads back to Godhead. The missionary activity of distributing Krishna Consciousness all over the world is inseparable from the very practice of Krishna Consciousness. Indeed, as stated, the Vedic scriptures teach that the yugadharma, or supreme religious duty of this age is to benedict others with Krishna consciousness.

33. The age of kali (quarrel) began with Vyasadeva's transcription of Vedic knowledge. The scriptures and teachers of Krishna Consciousness have underscored the distribution and reading of Vedic literature as the most practical method for reviving God consciousness in the world. Sri Caitanya personally ordered his disciples to write books explaining the Vedic knowledge and a small handful of his intimate disciples wrote literally hundreds of books. When Srila Prabhupada's spiritual master instructed him to teach Krishna Consciousness to the West, the importance of the distribution of Krishna Conscious literature was underscored. Therefore, Srila Prabhupada has written over fifty books, large and small, for the Western reader. His books comprise his own translations of various scriptures, including the Bhagavad-gita and Srimad-Bhagavatam, and include his own purports or commentaries interpreting the scriptures. Additionally, he founded our

monthly publication, Back to Godhead, which is a compendium of articles on Krishna Consciousness. These books and magazines, printed in vast quantities are publicly distributed by Krishna Consciousness devotees.

34. ISKCON seeks to make Vedic knowledge available to all persons without discrimination by bringing this knowledge out into the American free marketplace of ideas. In a country such as Russia, unfortunately, the government openly criticizes and suppresses free religious expression and ISKCON has not yet been able to firmly establish a base there. However, in the United States, founded by men of strong religious principles and based upon freedom of religious expression, ISKCON has found an open forum for the expression of its principles and beliefs. ISKCON feels that the best defense against Communism, which openly propagates atheism, is the maintenance of a healthy state of national God-consciousness.

35. Every day in every kind of weather, from ISKCON centers worldwide, devotees preach in public places. Risking personal danger (devotees have been robbed, beaten, raped and even killed) and facing frequent insult and ridicule for their unconventional appearance of shaved heads and religious robes, the devotees dedicate their lives to distributing Vedic knowledge to the mass of the people. Sankirtan can be so difficult at times, that only the most dedicated, compassionate and self-sacrificing devotees make this distribution their personal full-time duty. These devotees are highly respected within the ISKCON movement for their difficult work and selfless dedication. The devotees who distribute books receive no salary for their activities. ISKCON provides fully for the economic maintenance of its members, and its members perform missionary activities as a voluntary and joyful duty, for the benefit of human society.

36. Thus, the performance of Sankirtan, the most essential aspect of which is the distribution of Vedic literature and preaching, is the life and soul of the Krishna Consciousness movement. Krishna Consciousness is a joyful and peaceful way of life, and the devotees of ISKCON are not content with simply enjoying the life of Krishna Consciousness alone. They want the whole world to be able to take advantage of this great Vedic knowledge and thus become peaceful, happy and fulfilled. It is hoped that government officials will cooperate with this movement by insuring the continued freedom, constitutionally protected, to distribute literature in all public places.

37. Understanding that the natural position of everyone is to act harmoniously with God, and that forgetting this is the cause of all human suffering, the members of ISKCON undertake as their life's mission the helping of others to regain their lost God-consciousness. Because such a vast quantity of knowledge dealing with man's relationship with God is contained in the Vedic scriptures, the most effective means of preaching is through the distribution of large quantities of these literatures to the people in general.

38. In order to deal with the public in a manner befitting that of a man of God, all those participating in the book distribution program are required to be highly trained and qualified. His Divine Grace A.C. Bhaktivedanta Swami Prabhupada has given important directives in this regard:

> "My general request is that you all distribute as many books as possible and at the same time be very careful in dealings with others so that they may not become irritated with us . . . Our men should be adored for their honesty . . . Purity is the force . . . If you simply glorify Krsna and our books in the best descriptive manner anyone and everyone, even if they are atheists or other-

wise, can be convinced to purchase them. Of course, that is a great art, and not everyone can do it. But gradually, by preaching in this way, striving so much to present a wonderful picture of our books to the people, gradually you will master the way of how to do it."

39. Bearing these instructions in mind, our practice is to attempt to talk to members of the public about our faith, to advocate the reading of our literature, and to encourage donations to support our religion. Devotees are instructed to simply present the literature to passersby and begin engaging them in conversation about the contents. After some explanation, the individual is encouraged to take the book and give a donation to cover the printing costs and more, if possible, to help support the missionary movement of Krishna Consciousness. If a sincerely interested person cannot afford the full cost of the book, he is still encouraged to keep it at whatever price he can pay.

40. Devotees are frequently given classes on the techniques and philosophy of preaching God consciousness through the distribution of Vedic literature. Devotees who practice Sankirtan at the Minneapolis Airport and at other public places are instructed to be courteous and, although devotees are often enthusiastic they are cautioned not to be aggressive as to anger people. Short-change tactics, and any other sort of morally and legally unfair practices are strictly forbidden. Devotees are instructed not to impede traffic and not to be insistent with those persons who state that they are not interested. Any devotee who goes beyond these mandates is acting in an unauthorized manner and his conduct is in no way condoned by this international religious movement. Devotees are instructed that they are subject to all laws regarding the conduct of individuals in public places, such as theft, fraud, assault and block-

ing traffic. In this way, ISKCON hopes to maintain the highest standard of conduct and character among all of its devotees.

41. As stated, Krishna Consciousness and the Sankirtan Movement was brought to the Western world 11 years ago by His Divine Grace A.C. Bhaktivedanta Swami Prabhupada, our spiritual master, who is eleventh in line in disciplic succession from Sri Caitanya. In pursuance of the mission of Lord Caitanya, Srila Prahbupada has instructed us to go wherever people publicly gather, collect alms and distribute literature describing the glories of God. Indeed, he instructed in a letter, "This distribution of our books is the only way we can save the world." Preaching of the message of Krishna Consciousness is inextricably based on the publishing and distribution of *Vedic* books because these books directly contain our scriptures.

42. Finally, to repeat, donations and scripture sales are the very lifeblood and principal means of support of my religious movement. For my scripture and religious literature distribution to be possible, I have to be able to solicit donations to defray printing and other distribution costs. I personally am paid nothing, but am totally sustained and provided for by my temple.

43. I respectfully submit that only by the recognition of God as the supreme father can there be brotherhood, peace and prosperity. In this materialistic world, the temples of Krishna Consciousness are like oases in the desert where parched men may seek the nectar of happiness. We invite one and all to stop at our temples and take part in our program of classes, festivals, chanting, feasting and worship. The temples are open for everyone and everyone is invited to visit

them and inquire into this sublime and easy process for finding perfect happiness.

JOSEPH BECA, also known as
NAIKATMA

Subscribed and sworn to before me this 24th day of August, 1977. Kathleen M. Graham, Notary Public, Hennepin County, Minnesota. My commission expires Aug. 28, 1983.

(Caption)

AFFIDAVIT OF MICHAEL HEFFRON

Michael Heffron, being first duly sworn upon oath, deposes and says as follows:

1. I am the Secretary-General Manager of the Minnesota State Fair. This affidavit is submitted in opposition to plaintiffs' request for injunctive relief.

2. Having been appointed to my current position by the Board of Managers of the Minnesota State Agricultural Society, I am responsible for the day-to-day overall supervision and management of the annual Minnesota State Fair on the state fairgrounds in Ramsey County, Minnesota.

3. The space, including permanent buildings and structures, occupied by State Fair exhibitors and concessionaires generally covers about 125 acres, with the bulk of these persons or groups concentrated in an area about one-third of the total area.

4. During recent years the Minnesota State Fair has been forced to decline each year approximately 300-500 applicants for exhibit/concession space on the fairgrounds for the sole reason that such space is not available by the time of their applications. Currently there are approximately 1,400 exhibitors and concessionaires with fairgrounds space at the 1977 State Fair.

5. The Minnesota State Fair has attempted to treat all applicants equally and uniformly in determining who is permitted to rent or obtain space for the sale or display of their products, books, wares and other materials. This determination is made on a "first-come, first-served" basis.

6. The foregoing policy has been conveyed to plaintiffs by me and my staff, as evidenced by the letters attached hereto as Exhibits "A" and "B." The aforesaid letters were written in response to the only two inquiries my staff received from plaintiffs' agents, which inquiries were received well after the time when space had already been allocated for the 1977 Minnesota State Fair.

7. At the present time, I have received no response to my letter of August 19, 1977, (Exhibit "B" hereto).

8. In conjunction with organizing and managing the annual State Fair, my staff and I have the responsibility to insure speedy and adequate fire, safety, health and welfare protection for all concessionaires, exhibitors, employees and those persons who attend the fair. The congested conditions on the enclosed fairgrounds during the annual State Fair makes this responsibility burdensome and critical.

9. In recent years during the annual State Fair there have been approximately 65-75 arrests and investigations of persons allegedly involved in violation of state criminal statutes (*e.g.*, assaults, controlled substance abuses and thefts) and state juvenile proceedings. In addition, the State Fair staff must act promptly to investigate and provide health care to at least twice as many persons who receive injuries on the fairgrounds.

10. During the past five years the annual State Fair attendance (excluding exhibitors, concessionaires and performers) has been 1,320,000. The average week-day atten-

dance has been 115,000, and the average attendance on Saturday and Sunday has been 160,000.

11. For many years the State Fair has rented booth or similar space to numerous groups and persons who use such space purportedly to espouse religious, political and other ideological views. There have been no exceptions to this rule. Attached hereto as Exhibit "C" is an accurate list of only some of the foregoing organizations and their respective rental fees paid for the 1977 State Fair.

12. The list contained on Exhibit "C" does not include several other groups which traditionally have occupied space on the Minnesota State fairgrounds and ostensibly would claim their activities to be protected by First Amendment freedoms of speech, press and religion. Examples include Minneapolis-St. Paul newspapers and broadcast media, all of which have confined their reporting and dissemination of news to fixed rental locations on the fairgrounds.

13. Rental fees are charged equally to State Fair exhibitors and concessionaires, based upon a flat rate per foot of frontage for each space allocation.

14. With respect to plaintiffs herein, the policy of the Minnesota State Fair is to treat them in the same manner as all concessionaires and exhibitors, whether strictly commercial or purely religious. This policy has been conveyed to plaintiffs by virtue of Exhibits "A" and "B" herein.

15. It is not the policy of the Minnesota State Fair to arrest and prosecute criminally members of the International Society of Krishna Consciousness for violations of the foregoing rental policy. I am not aware of any such arrest or prosecution ever having occurred at the fairgrounds. The policy has been merely to request (and evict, if necessary) violators to leave the fairgrounds.

16. The Minnesota State Fair is willing to rent or provide exhibit space for plaintiffs at a fixed location on the fairgrounds during the 1977 State Fair. Under our proposal, all sales or financial transactions and distribution of materials would be required, as they are for all fair exhibitors, to be limited to the aforesaid location.

17. The Minnesota State Fair staff does not intend to restrict plaintiffs from peaceably walking about the fairgrounds and discussing their political, religious or other views with Fair patrons.

18. Based upon my 20 years' experience with the Minnesota State Fair and information from my counterparts at other State Fairs, I believe that allowing an unlimited number of ISKCON devotees to have access to *all* public areas of the fairgrounds to dance, sing or chant or to sell, solicit, proselytize and distribute flowers, printed materials and other products without restriction would pose an imminent and serious threat to other State Fair exhibitors and concessionaires and to the one million or more persons who attend the Fair during a 12-day period. Such unlimited freedom would greatly increase the Fair staff's difficulties in maintaining crowd control and in providing ready access for fire, safety, health and other emergency vehicles and assistance throughout the fairgrounds.

19. Furthermore, based upon my experience as a fair administrator, I believe that allowing ISKCON devotees to have the full relief they request would encourage other similar groups or persons (including those who have been given and those who have been denied rental space for the 1977 State Fair) not to pay rental fees and to undertake the same activities now and at future Fairs. Such a result would not only have a major negative impact on Fair revenues but also would make

the fairgrounds almost unmanageable, all to the detriment of the health, safety and convenience of persons attending the Fair.

FURTHER AFFIANT SAYETH NOT.

MICHAEL HEFFRON

Subscribed and sworn to before me this 25th day of August, 1977.—Hazel I. Redlack, Notary Public, Ramsey County, Minn. My commission expires June 16, 1981.

(Caption)

ORDER FOR TEMPORARY
RESTRAINING ORDER

Plaintiffs' Motion for Temporary Injunction having been heard upon the affidavits of Joseph Beca and James Payne, Esq., and Plaintiffs' Memorandum of Law, and

The Court having considered the Memorandum of Law filed on behalf of the Defendants and the State of Minnesota by Kent G. Harbison, Assistant Attorney General, and the relevant affidavits filed therewith, and the Court further being mindful of the significant constitutional rights asserted to be involved in the actions of the Defendants, vis-a-vis Plaintiffs,

NOW, THEREFORE, IT IS ORDERED that Defendants, and each of them, their agents, officers, servants, employees, and all persons in active concert and participation with them are hereby restrained until further hearing and order of this Court from arresting, participating in the arrest of, excluding from the Fairgrounds, or preventing activities of Plaintiff, such as, espousing their religious beliefs, proselytizing others to those beliefs, distributing religious literature or soliciting donations for religious purposes in any portion of the Minnesota Fair Grounds generally open to the public during the 1977 Minnesota State Fair; it is, however, specifically

FURTHER ORDERED that Plaintiffs are enjoined from selling or inducing others to purchase, religious literature, items or artifacts, except at a space rented for that purpose on the grounds of the Minnesota Agricultural Society in compliance with the applicable regulations of said Society.

IT IS FURTHER ORDERED that this Order shall be effective upon Plaintiffs' posting of a bond in the amount of One Hundred & Fifty ($150) Dollars for the purpose of indemnifying Defendants from such costs and damages as may be incurred or suffered in the event Defendants are found to have been wrongfully enjoined or restrained hereafter.

SIDNEY P. ABRAMSON
Judge of District Court

Dated: August 26, 1977.

STIPULATION OF FACTS
CONDITIONS OF STIPULATION

International Society for Krishna Consciousness, Inc., and Joseph Beca, plaintiffs herein and Michael Heffron, Secretary-General Manager of the Minnesota State Agricultural Society and all other named defendants herein by and through their respective counsel do hereby stipulate that the facts hereinafter set forth are true and may be offered in evidence at the trial of this action without any additional identification or authentication. All facts recited herein are stipulated by and between the parties to this proceeding for the purpose of this action only and nothing contained herein shall constitute an admission by either party for any other purpose, action or proceeding.

Nothing contained in this stipulation shall preclude either party from presenting other relevant evidence with respect to the subject matter of this stipulation or any documents which are not inconsistent with the facts stipulated herein. Furthermore, nothing contained in this stipulation shall constitute an admission by either party with respect to the relevancy or materiality of any fact recited herein, and each party reserves the right to object to the admission of any or all facts recited herein on grounds of relevancy and/or materiality.

FACTS

1. The International Society for Krishna Consciousness, Inc. (ISKCON) is an international religious society which espouses the religious and missionary views of Krishna Consciousness. It is duly organized as a non-profit religious corporation under the laws of the State of Minnesota, as well as under the laws of other states, and maintains temples and schools in cities throughout the United States and the world, including Minneapolis, Boston, Atlanta, Washington D.C., New York, Los Angeles, Montreal, Paris, Singapore, and Tokyo.

2. Krishna Consciousness is the branch of Hinduism whose adherents subscribe to the absolute premise of a single god or deity (in Sanscrit "Krishna"). The sect's scriptural foundations are the *Vedas*, ancient Hindu religious texts dating to 3000 B.C.

3. ISKCON's purpose is at least two-fold. First, it provides a living situation in which devotees can peacefully execute their spiritual life. Second, it seeks to make available to as wide a number and cross-section of the population as possible the religious truth as it is known to ISKCON members.

4. During the day, the main activity of ISKCON members is preaching Krishna Consciousness. Many devotees go out to public places to distribute the Society's books and official journal, *Back to Godhead* magazine. The devotees who distribute books receive no salary for their activities, and lead an austere life, enjoying few material amenities.

5. Hinduism as expressed by Krishna Consciousness imposes on its members the duty to perform a religious ritual known as *Sankirtan*, which consists of going out into public places, to disseminate or sell religious literature and to solicit contributions to support the publishing, religious, and educational functions of Krishna Consciousness. *Sankirtan* is directed to spreading religious truth as it is known to members of Krishna Consciousness, to attracting new members, to supporting the publication of ISKCON's religious literature and to supporting other religious activities of ISKCON. Donations and book sales are a principal means of support of this religious movement.

6. Michael Heffron is the Secretary of the Board of Governors of the Minnesota State Agricultural Society and Manager of the Minnesota State Fair. As such, he is the person charged with supervising all activities at the Minnesota State Fair and, through his subordinates, with implementing and enforcing all State Fair rules and regulations.

7. Harveydale Maruska is the President of the Board of Governors of the Minnesota State Agricultural Society and, with Michael Heffron, is charged with appointing peace officers to enforce all rules, regulations, laws, statutes, and ordinances on the Minnesota State Fairgrounds, including the arrest of persons who violate such laws.

8. Warren Spannaus is the Attorney-General of the State of Minnesota and, as such, designates a staff member to act

as attorney to the Board of Governors of the Minnesota Agricultural Society; that attorney is charged with securing the prosecution of those arrested at the Minnesota State Fair Grounds for violations of law, ordinance, statute, rule, or regulation.

9. The Board of Governors of the Agricultural Society is charged by law with the administration and regulation of all activities of the Minnesota State Fair, and, through its subordinates, enforces all rules, regulations, laws, statutes, and ordinances at the fair.

10. The Minnesota State Fairgrounds are owned by the State of Minnesota and operated by the Minnesota State Agricultural Society. The Agricultural Society exercises unique power over the State Fairgrounds, as its secretary and president are authorized to appoint peace officers to enforce all applicable state and local ordinances in addition to all of the rules and regulations promulgated by the Agricultural Society. Those arrested for violation of any law or regulation while attending the Minnesota State Fair may be prosecuted by referral to a staff member of the Attorney-General's office.

11. ISKCON's devotees have expressed a desire to perform *Sankirtan* in those portions of the Minnesota State Fairgrounds open to the general public. By this lawsuit ISKCON devotees seek only to distribute and to sell religious literature, to solicit donations for their publications and for their religious activities, and to proselytize their religious beliefs. In performing *Sankirtan*, ISKCON devotees often greet members of the public by giving them flowers or small American flags, but for the purpose of this lawsuit they seek only to solicit contributions for their literature and their religious activities, and not for these greeting gifts. They do not seek to dance,

chant, or to engage in any other potentially disruptive or disorderly conduct.

12. At the 1977 State Fair, ISKCON devotees were permitted under the terms of a Temporary Restraining Order granted by the Court to espouse their religious beliefs, to proselytize others to those beliefs, to distribute religious literature, and to solicit donations for religious purposes in any portion of the State Fairgrounds generally open to the public. They were prohibited from selling or inducing others to purchase religious literature, items, or artifacts except at space rented for that purpose.

13. Rule 6.05 of the Rules and Regulations of the Minnesota State Fair provides:

> Sale or distribution of any merchandise, including printed or written material except under license issued for [from] the Society and/or from a duly-licensed location shall be a misdemeanor.

14. *Minn. Stat.* §37.20 provides that constables or deputies appointed by the secretary or the president of the Agricultural Society may "without warrant arrest any person found violating any law of the State, or any rule, regulation, bylaw, or ordinance of the Society, and may summarily remove the persons and properties from the grounds."

15. Defendants also claim that authority to regulate the activities of ISKCON devotees is inherent in *Minn. Stat.* §37.01 and §37.14, which grant the State Agricultural Society designees discretion in applying reasonable management policies to the operation of the State Fair.

16. Under the policy of the Minnesota State Agricultural Society, all persons, groups or firms which desire to sell, exhibit or distribute materials during the annual State Fair must do so only from fixed locations on the fairgrounds. In most

instances those fixed locations are in the form of booths or buildings the space of which is rented at a fixed rate by the exhibitor, distributor or concessionaire.

17. The Minnesota State Fair's rental of fairground space is embodied in a policy applied equally to all persons. That is, space is rented on a "first-come, first-served" basis, with space applications being received in January of each year. Those persons who do not apply for such space or apply after all the available space has already been rented to previous applicants are not permitted to sell, exhibit or distribute their goods on the Fairgrounds.

18. Because of the large number of persons and groups desiring space on the fairgrounds, each year about 300-500 applicants for exhibit/concessionaire space are rejected solely due to lack of space available by the time of the applications. Thus, many persons who desire to sell, distribute or exhibit their materials during the annual Fair are not permitted to do so.

19. Approximately 1,400 exhibitors and concessionaires have rented space for the 1977 and 1978 State Fairs.

20. The state fairgrounds occupies about 125 acres, the bulk of which is covered by permanent buildings and temporary structures, parking lots, roads, and streets. The layout of the fairgrounds is more fully described in the attached map.

21. The State Fair attracts fairgoers from all parts of the State and from other States. During the past five years the attendance at the annual Fair has been about 1,320,000. The average week-day attendance has been 115,000, and the average attendance on Saturday and Sunday has been 160,000. The total attendance during the 1977 State Fair was about 1,299,000.

22. In its rental of booth space the State Fair does not discriminate against groups and firms desiring to sell, distribute or exhibit items at the Fair for any reason, including their religious or political views.

23. The State Fair administration has indicated its willingness to rent booth space to ISKCON during the 1978 State Fair. ISKCON, while unwilling to confine its religious activities to a booth, has indicated its willingness to submit to the regulation of its members in their circulation throughout the fairgrounds to proselytize, distribute and sell literature, and solicit contributions. The dispute in this case, therefore, centers on to what extent the State Fair administration may regulate the activities of ISKCON during the annual Minnesota State Fair.

Executed this 31st day of July, 1978.

By /s/ JAMES A. PAYNE
Attorneys for Plaintiffs

By /s/ KENT G. HARBISON
Attorneys for Defendants

1977 MINNESOTA STATE FAIR

AUG. 25TH - SEPT. 5TH

(Caption)

SECOND AFFIDAVIT OF JOSEPH BECA,
a/k/a NAIKATMA

JOSEPH BECA, being first duly sworn, deposes and states the following:

1. My religious name is Naikatma, and I have been a member of ISKCON for about five years. During the 1977 Minnesota State Fair I was in charge of the ISKCON temple in Minneapolis. I am currently affiliated with the ISKCON temple in St. Louis, Missouri.

2. I engaged in *Sankirtan* on five or six days at the 1977 Minnesota State Fair. On each day, an identification badge, identifying me as a member of ISKCON, was attached to my person or to my bookbag. While I was at the fair, I observed on several occasions individuals distributing slips of papers to fairgoers. Those slips of paper which I read in effect stated that fairgoers might be approached by roving solicitors, that the State Fair neither licensed or sanctioned the solicitors, and that complaints against solicitors could be filed with the Fair Administration.

3. I was also on numerous occasions harassed by individuals wearing state fair badges, who yelled at me, accused ISKCON members of being "rip-offs," and interrupted my conversations with fairgoers to discourage them from speaking with me or from contributing to ISKCON. On another occasion, at the main entrance, I was taken to the police station near the Administration Building by a police officer who had been directing traffic nearby. On that occasion, he stopped directing traffic, walked several hundred feet to where I was standing and talking with a couple, and accused me of selling something. I replied that I was merely distributing literature and soliciting donations. When the officer asked the couple

with whom I was speaking whether I had been selling them something, the couple shook their heads "no." At this time, I also showed the officer a copy of the temporary injunction issued by Judge Abramson. After reading the injunction, the officer made me accompany him to the police station where I was detained for 15 or 20 minutes before being permitted to go about my business.

4. As an elder devotee of the Minneapolis temple, I spoke with other members of the Minneapolis temple about the meaning of the injunction issued by Judge Abramson and the proper methods of solicitation at the State Fair. I attempted to make clear to those other devotees that they should not be so aggressive as to disturb or annoy people, to be insistent with persons who stated that they were not interested in speaking with us, and not disrupt or obstruct traffic. I also attempted to make clear to the other devotees that literature, flags, or flowers which had been given to fairgoers should not be taken back if the fairgoers desired to keep them, even though they also chose not to contribute to ISKCON. I also attempted to make the devotees aware that they were subject to all laws regarding the conduct of individuals in public places, such as theft, fraud, assault, and blocking traffic. In my affiliations with other temples, it has been my experience that this type of instruction is common.

Further affiant saith not.

Dated:

JOSEPH BECA

Subscribed and sworn to before me this —— day of ——, 1978. — ————————, Notary Public.

(Caption)

AFFIDAVIT OF THOMAS KERR, a/k/a GOPAL

THOMAS KERR, being first duly sworn, deposes and states the following:

1. My religious name is Gopal and I have been a member of ISKCON since 1975. I was present at the 1977 Minnesota State Fair for four or five days to engage in the religious practice of Sankirtan. At that time I was affiliated with the ISKCON temple in Minneapolis. I am presently affiliated with the ISKCON temple in St. Louis, Missouri.

2. On numerous occasions when I entered the fair, the individual taking tickets would give to me a flier which stated that fairgoers might be approached by roving solicitors, that the fair neither licensed nor sanctioned them, and that complaints against them could be filed with the fair administration. On several occasions, I also noted individuals who appeared to be state fair employees handing out similar fliers at information booths and concession areas. On several occasions, I also noticed that individuals, who appeared to be state fair employees, would begin to distribute similar fliers to fairgoers in areas where I or my fellow ISKCON members were proselytizing or distributing literature.

3. On one occasion, between the administration building and the bandstand, two individuals who appeared to be about 18 years old and stated that they were state fair employees, grabbed some flowers from me and kept them until I threatened to call the police. One of them tried to knock off my hat, and then both stood a short distance away from me while I attempted to distribute a religious book to someone and screamed obscenities at me until I left the area.

4. On September 2, 1977, near the corner of Minnesota and Chambers, an individual from concessions booth No. 178

assaulted me by shoving, hitting me with his fists, and kicking me as I stood on the corner about ten yards from any concession booth. He threatened to "break my neck" on the plea that ISKCON members were distributing books without official permission.

5. On the same day, a few hours later, I asked the state fair security officer, Badge No. 578, to protect me from a man who had been harassing me by yelling at me, following me, and physically pushing me, though I had never at anytime approached him. The officer refused to aid me, and instead told me that I was not supposed to be bothering people by passing out books and flags.

6. On September 3, 1977, as I was walking across the Liggett and Judson intersection alone and was not engaged in any distribution activities, an ice truck which was driven by a black haired young man and which appeared to be traveling at about ten miles per hour almost hit me. When I jumped out of the way and asked the driver what he was doing, he said that he was trying to run me over and that a policeman he had just spoken with had told him that the Hare Krishna's were not "legal" at the fair. The license plate number of the vehicle was "07311" and I had often observed the same driver delivering ice on the fair grounds.

7. In my performance of Sankirtan at the 1977 state fair, I always understood that I should not be so aggressive as to disturb or annoy people, that I should not be insistent with persons who stated that they were not interested in speaking with me, and that I should not obstruct traffic. I also understood that I was subject to all laws regarding the conduct of individuals in public places, such as theft, fraud, assault, and blocking traffic. I also understood that I should not take back literature or greeting gifts from fairgoers to whom I had

given them, if the fairgoers desired to keep them, even if they did not wish to contribute to ISKCON. To the best of my knowledge I complied with all these principles during the 1977 Minnesota State Fair.

5. The above is true to the best of my information, knowledge, memory, and belief.

Further affiant saith not.

Dated:

(Caption)

AFFIDAVIT OF DAVID C. EWERT

David C. Ewert, being first duly sworn, deposes and states the following:

1. I reside at 5920-83rd Parkway North, Brooklyn Park, Minnesota with my wife and family. I am 35 years old and I am self-employed as a manufacturer's representative. Neither I nor any member of my family is or ever has been a member of the International Society for Krishna Consciousness, and neither I nor any member of my family is or ever has been associated in any other way with that religion.

2. On or about September 9, 1977, my wife and I were visiting the Minnesota State Fair. In front of the Midway, near the children's rides, I was politely approached by a young man who gave me a flower and stated that he was collecting money for a religious cause. When I inquired, he identified himself as a member of the International Society for Krishna Consciousness, or the "Hare Krishna" religion.

3. During the course of my conversation with the young man, we were approached by another individual who attempted to discourage me from giving a donation to the ISKCON member, and told me that any funds that I might donate would not really go to support religious purposes. I informed this

individual that I did not wish him to interfere with my conversation with the ISKCON representative. After I gave a donation of $1.00 or so to the ISKCON member, however, the same individual returned and belligerently asked me if I knew the organization to which I was donating. I replied that I did. Before ending his conversation with me, the ISKCON member gave me a book of a religious nature which was clearly worth more than the donation that I had given him.

4. Later that same day, as my wife and I were leaving the Natural Resources building (the building housing the park rangers' exhibit), a young woman, who was distributing strips of paper, noticed the ISKCON flower which my wife was still holding, approached us, and asked from whom we had received the flower and whether it had been given to us inside the building. We replied that we had not received it inside the building and that it had been given to us by a representative of ISKCON. Because of her concern, we asked her whether anything was wrong. She told us that ISKCON had been offered a rental booth by the State Fair Administration, but unlike other religious organizations, insisted on circulating throughout the fairgrounds to talk with people and solicit funds. She then gave us a slip of paper, a copy of which is attached to this affidavit as Exhibit A, and encouraged us to file any complaints against ISKCON with the State Fair Administration. I received the distinct impression from this young woman that she was soliciting complaints against ISKCON on behalf of the State Fair. I feel that by distributing these slips of paper soliciting complaints, the State was establishing an attitude among fairgoers that it was appropriate to harass members of the ISKCON religion, and I strongly feel that it is a wrong policy for any governmental body to engage in such activity.

The above is true to the best of my information, knowledge, memory and belief.

DAVID C. EWERT

Subscribed and sworn to before me this 2nd day of August, 1978. — James A. Payne, Notary Public, Hennepin County, Minnesota. My commission expires Feb. 9, 1983.

EXHIBIT A TO EWERT AFFIDAVIT

Good Day Ladies and Gentlemen. During your visit to the Minnesota State Fair, you may be approached by persons who walk about the grounds distributing items and soliciting contributions. The State Fair neither licenses nor sanctions such activity. We hope that your visit to the Exposition will be an enjoyable one. Therefore, if you have any complaints, compliments or comments concerning solicitations or any other activity on the Fairgrounds, we would encourage you to contact our Administration Building on Cosgrove Street near the Bandshell. Thank you and have a good day.

(Caption)

SECOND AFFIDAVIT OF MICHAEL HEFFRON

State of Minnesota

County of Ramsey—ss.

MICHAEL HEFFRON, being first duly sworn upon oath, deposes and says as follows:

1. I am the Secretary-General Manager of the Minnesota State Fair.

2. Having been appointed to my current position by the Board of Managers of the Minnesota State Agricultural Society, I am responsible for the day-to-day overall supervision and management of the annual Minnesota State Fair on the state fairgrounds in Ramsey County, Minnesota.

3. The space, including permanent buildings and structures, occupied by State Fair exhibitors and concessionaires generally covers about 125 acres, with the bulk of these persons or groups concentrated in an area about one-third of the total area.

4. During 1977, 1,299,017 visitors attended the annual Minnesota State Fair. In addition there were approximately 1,300 exhibitors and concessionaires who rented fairground space at the 1977 State Fair.

5. The Minnesota State Fair has attempted to treat all applicants equally and uniformly in determining who is permitted to rent or obtain space for the sale or display of their products, books, wares and other materials. This determination is made on a "first-come, first-served" basis.

6. The foregoing policy has been conveyed to plaintiffs by me and my staff. I have informed representatives of the International Society for Krishna Consciousness that they would be permitted to sell or distribute materials and solicit donations at the 1978 Minnesota State Fair (August 24-September 4, 1978) on the condition that they apply for booth space to be rented at a nominal charge.

7. In conjunction with organizing and managing the annual State Fair, my staff and I have the responsibility to insure speedy and adequate fire, safety, health and welfare protection for all concessionaires, exhibitors, employees and the one million-plus persons who attend the fair. The congested conditions on the enclosed fairgrounds during the annual State Fair makes this responsibility burdensome and critical.

8. In recent years during the annual State Fair there have been approximately 65-75 arrests and investigations of persons allegedly involved in violation of state criminal statutes (*e.g.*, assaults, controlled substance abuses and thefts) and

state juvenile proceedings. In addition, the State Fair staff must act promptly to investigate and provide health care to at least twice as many persons who receive injuries on the fairgrounds.

9. During the five years prior to 1978 the average annual State Fair attendance (excluding exhibitors, concessionaires and performers) has been 1,320,000. The average week-day attendance has been 115,000, and the average attendance on Saturday and Sunday has been 160,000.

10. For many years the State Fair has rented booth or similar fixed spaces to numerous groups and persons who use such space purportedly to espouse religious, political and other ideological views. There have been no exceptions to this rule. Attached hereto as Exhibit "A" is the most recent accurate list of only some of the foregoing organizations and their respective rental fees paid for the 1978 State Fair.

11. The list contained on Exhibit "A" does not include several other groups which traditionally have occupied space on the Minnesota State fairgrounds and ostensibly would claim their activities to be protected by First Amendment freedoms of speech, press and religion. Examples include Minneapolis-St. Paul newspapers and broadcast media, all of which have confined their reporting and dissemination of news to fixed rental locations on the fairgrounds.

12. The State Fair does not discriminate with regard to leasing booths or similar space to numerous groups and persons who use such space to espouse religious, political, and other ideological views, no matter how unpopular. An example of this is the fact that in 1977, booth space was leased to the Christian Research Group, Inc., an avowedly anti-semitic and anti-black organization.

13. Rental fees are charged equally to State Fair exhibitors and concessionaires, based upon a flat rate per foot of frontage for each space allocation.

14. With respect to plaintiffs herein, the policy of the Minnesota State Fair is to treat them in the same manner as all concessionaires and exhibitors, whether strictly commercial or purely religious.

15. It is not the policy of the Minnesota State Fair to arrest and prosecute criminally members of the International Society of Krishna Consciousness for violations of the foregoing rental policy. I am not aware of any such arrest or prosecution ever having occurred at the fairgrounds. The policy has been merely to request (and evict, if necessary) violators to leave the fairgrounds.

16. However, in 1977, 234 complaints were filed against plaintiffs as a result of their activities on the fairgrounds. These complaints indicate among other things that plaintiffs were misrepresenting themselves as to the type of organization that they represented. At times, for example, according to the complaints, they represented themselves as being representatives of the State Fair itself. The complaints also indicate that members of ISKCON represented themselves as being members of the Division of Natural Resources and as solicitors of funds for the benefit of agricultural schools for underprivileged children. Other complaints also indicated that the plaintiffs were in fact *selling* their articles, such as American flags and flowers, in direct violation of the Order of this Court dated August 26, 1977. Other complaints also state that at times plaintiffs' organization solicited and received funds from minors attending the State Fair. These minors were in many cases not accompanied nor counseled by a parent or guardian at the time of solicitation, according to some com-

plaints. Copies of some of the complaints filed against plaintiffs' organization are attached hereto as one packet, Exhibit "B".

17. The Minnesota State Fair is willing to rent or provide exhibit space for plaintiffs at a fixed location on the fairgrounds during the 1978 State Fair. Under our proposal, all sales or financial transactions and distribution of materials would be required, as they are for all fair exhibitors, to be limited to the aforesaid location. The estimated cost to plaintiffs for the rental of exhibit space would be approximately $175.00 for the year 1978.

18. Based upon my 20 years' experience with the Minnesota State Fair and information from my counterparts at other state fairs, I believe that allowing an unlimited number of ISKCON devotees to have access to *all* public areas of the fairgrounds to dance, sing or chant or to sell, solicit, proselytize and distribute flowers, printed materials and other products without restriction would pose an imminent and serious threat to other State Fair exhibitors and concessionaires and to the one million or more persons who attend the Fair during a 12-day period. Such unlimited freedom would greatly increase the Fair staff's difficulties in maintaining crowd control, in providing ready access for fire, safety, health and other emergency vehicles, in curbing deceptive solicitations on the fairgrounds, and in preventing various types of criminal activity including pickpocketing, purse-snatching, etc.

19. Furthermore, based upon my experience as a fair administrator, I believe that allowing ISKCON devotees to have the full relief they request would encourage other similar groups or persons (including those who have been given and those who have been denied rental space for the 1978 State Fair) not to pay rental fees and to undertake the same ac-

tivities now and at future fairs. Such a result would not only have a major negative impact on fair revenues but more importantly, would make the fairgrounds almost unmanageable, all to the detriment of the health, safety, and welfare of persons attending the State Fair and other exhibitors and concessionaires.

Further affiant sayeth not.

MICHAEL HEFFRON

Subscribed and sworn to before me this 27th day of July, 1978. — Kenneth R. Wenzel, Notary Public, Ramsey County, Minn. My commission expires April 3, 1984.

EXHIBIT

LIST OF EXHIBITORS OF A POLITICAL, RELIGIOUS, EDUCATIONAL NATURE CONTRACTED FOR SPACE AT THE 1978 MINNESOTA STATE FAIR JUNE 20, 1978

ABORTION RIGHTS COUNCIL OF MINNESOTA: $230.00
Educational Material on Abortion

AMBASSADOR CULTURAL FOUNDATION: $322.00
Magazines

AMERICAN ASSOCIATION OF RETIRED PERSONS: $253.00
Literature on Retirement Association

AMERICAN HEART ASSOCIATION: ..... $ 50.00
Heartmobile

AMERICAN PARTY OF MINNESOTA: $414.00
Political Information

CHRISTIAN BUSINESS MEN'S ASSOCIATION: $644.00
Christian Oriented Books, Cards and Tapes

CHURCH OF CHRIST: $506.00
Literature, Tracts

D.F.L. STATE CENTRAL COMMITTEE: $490.00
Political Information

FAITH BROADCASTING NETWORK, INC.: $322.00
Christian Information and Brochures

GRAND LODGE OF MINNESOTA—
A.F. & A.M.: $460.00
Public Relations Information

INDEPENDENT REPUBLICANS OF
MINNESOTA: $490.00
Political Information

LEGION OF MARY—ST. PAUL: $414.00
Catholic Information and Literature

MARCH OF DIMES: $225.00
Information on Birth Defects, Health and Nutrition

MINNESOTA CONFERENCE OF
7th DAY ADVENTISTS: $828.00
Health and Literature and Tests

MINNESOTA FOSTER PARENTS
ASSOCIATION: $207.00
Information

SALVATION ARMY: $326.00
Information

TWIN CITIES BAPTIST MESSIANIC
WITNESS: $276.00
Bibles and Christian Literature

WORLD HOME BIBLE LEAGUE: $276.00
Bible Study Courses, and Tracts

VETERANS OF FOREIGN WARS: $207.00
Veterans Information

LIST OF CONCESSIONAIRES OF A POLITICAL, RELIGIOUS, EDUCATIONAL NATURE CONTRACTED FOR SPACE AT THE 1978 MINNESOTA STATE FAIR
JUNE 20, 1978

ASSOCIATION OF EVANGELICAL OF GREATER ST. PAUL: $300.00
Religious, Films, Literature, Records, Etc.

ASSOCIATION OF NON-SMOKERS RIGHTS: $290.00
Information and Materials on Non-Smokers Rights

CHRISTIAN EDUCATIONAL SERVICE: $730.00
Bible Cassettes, Bible Stories, Bibles

FRIENDS OF ANIMAL ADOPTIONS, INC.: $348.00
Literature on Animal Adoption & Animal Related Items Such as, Jewelry, Posters, Stationary, Etc.

INDEPENDENT REPUBLICANS OF MINNESOTA: $50.00
Jewelry and Miscellaneous G.O.P. Articles

LOGOS BOOKSTORE: $522.00
Christian Books, Jewelry, Records, Posters, Plaques

LUTHERAN COLPORTAGE SERVICE: $522.00
Sunday School Supplies, Religious Jewelry, Tapes, Calendars, Bibles, Photos, Etc.

MINNESOTA BAPTIST ASSOCIATION: $348.00
Christian Books and Records

MINNESOTA CITIZENS CONCERNED FOR LIFE: $290.00
Pro Life Buttons, Brochures, and Literature

MINNESOTA CONFERENCE OF 7TH DAY ADVENTISTS: $615.00
Food Concession

MINNESOTA D.F.L. STATE CENTRAL COMMITTEE: $50.00
Political Literature and Buttons

MINNESOTA FUND FOR ANIMALS: $261.00
T-Shirts, Posters, Books, Etc.

NORTH HEIGHTS LUTHERAN CHURCH: $740.00
Christian Books, Buttons, Tapes, Tracts, Etc.

O.U.R.S., INCORPORATED: $261.00
Books, Cards, Craft Items

POLISH AMERICAN CONGRESS OF MINNESOTA: $261.00
Polish Literature, Periodicals, Stationary & Candy With Polish Themes

ST. PAUL HUMANE SOCIETY: $150.00
Humane Society Public Relations, Books, Etc.

SAVE OUR UNWANTED LIFE, INC. (S.O.U.L.): $261.00
Pro-Life Handbooks, Records, Buttons, Etc.

SCHOOL FOR SOCIAL DEVELOPMENT: $580.00
Handcrafted Items Made by Mentally Handicapped and Cerebral Palsied Youths and Adults

U. S. — CHINA PEOPLES FRIENDSHIP ASSOCIATION: 10%
Artifacts and Books on People's Republic of China

CHRISTIAN RESEARCH: $250.00
Patriotic Books and Information

CHILDREN'S ONCOLOGY SERVICES OF THE UPPER MIDWEST: $232.00
Information on Children with Cancer, Calendars, Cards and Information

(Caption)

AFFIDAVIT OF MICHAEL GENE KROGNESS

State of Minnesota

County of Hennepin—ss.

MICHAEL GENE KROGNESS, being first duly sworn, deposes and states as follows:

1. My name is Michael Gene Krogness. My permanent residence is 8801 Elliot Avenue South, Bloomington, Minnesota. I am currently a student in my third year at the University of Minnesota.

2. On August 30, 1977, I attended the Minnesota State Fair. At approximately 5:30 p.m. at or near the Grandstand sidewalk on the Minnesota State Fairgrounds, I was approached by a member of the plaintiff-ISKON group, although he represented himself as being with the Division of Natural Resources of Minnesota and solicited me for a monetary contribution. I refused to contribute.

Further affiant sayeth not.

MICHAEL GENE KROGNESS

Subscribed and sworn to before me this 22nd day of September, 1977. — Ann L. Behning, Notary Public, Hennepin County, Minn. My commission expires Oct. 25, 1980.

(Caption)

AFFIDAVIT OF WILLIAM PADDOCK

State of Minnesota

County of Ramsey—ss.

WILLIAM PADDOCK, being first duly sworn, deposes and states as follows:

1. My name is William Paddock. My permanent address is 1672 Euclid Avenue, St. Paul. I am currently employed as a teacher at Highland Park School.

2. During the duration of the 1977 Minnesota State Fair (August 25 through September 6), I was employed by the State Fair in the Space Rental Office. I also handled complaints received by the State Fair.

3. On August 26 at approximately 6:00 p.m. at or near the corners of Commonwealth and Nelson while I was walking on the State Fairgrounds, the following incident occurred: I was walking with John Bettcher east on Commonwealth Avenue. We were approached by a person whom upon information and belief is a member of the International Society of Krishna Consciousness. He presented us with a small American flag and introduced himself as a teacher who wanted a donation for wayward and handicapped young people. He then presented us with a book about Hinduism and asked for a donation. He was asked if we could keep the book without the donation but he replied no. He claimed he had to make money. We repeated the question twice more, but he said no both times.

Further affiant sayeth not.

WILLIAM PADDOCK

Subscribed and sworn to before me this 19th day of September, 1977. — Lorraine D. Madzo, Notary Public, Ramsey County, Minnesota. My commission expires Sept. 17, 1981.

(Caption)

AFFIDAVIT OF ELIZABETH ANN MURPHY

State of Minnesota

County of Ramsey—ss.

ELIZABETH ANN MURPHY, being first duly sworn, deposes and states as follows:

1. My full name is Elizabeth Ann Murphy. My permanent residence is Rural Route No. 1, Lodi, Wisconsin. I am currently a senior at the University of Minnesota.

2. During the duration of the 1977 Minnesota State Fair (August 25-September 6), I was employed full time as an information guide by the Minneapolis Star-Tribune. I was assigned and worked at the Star-Tribune information booth located on Minnesota Avenue at the base of the Grandstand.

3. That on or about 12:30 p.m. on August 31, 1977, at the Star-Tribune booth of the State Fair I, along with David Hunt, of 5933-29th Place North, Minneapolis (a co-worker) had a conversation and encounter with a member of the plaintiff-ISKON group, the substance of which is as follows:

After watching the ISKON member approach various fair goers, we asked him what he was collecting for and what his religion was about. He was reluctant to answer our question. He mumbled something about kids with drug problems and then asked us if we had heard of Bhagavad-gita. We said we had heard the name but knew nothing about it. He said "Read this," and offered us a book which Dave Hunt accepted. Dave Hunt leafed through the book and both of us expressed our interest in its content. We said that we would read it. Then the individual asked for a contribution. Hunt said that he would like to know more about the book before he would make a donation. The ISKON individual said that he didn't have time to talk to us about it. I said that I didn't want to contribute to an activity or a religion that I knew nothing about. He then took the book back and put it under this arm. I was surprised because I thought he had given it to us. As he was about to leave, I made a comment about his not letting us have the book free. He shrugged off the comment and said that "yesterday" he had given away a book free.

4. On numerous occasions I saw members of the ISKON group taking money from children under fifteen years old who seemed very confused and reluctant to give their money.

5. On numerous occasions I saw members of the ISKON group put a small, paper American flag or a flower into a passerby's hand or lapel or pocket only to take back the flag or flower if a donation was not made.

Further affiant sayeth not.

ELIZABETH ANN MURPHY

Subscribed and sworn to before me this 7th day of September, 1977. — Deborah L. Kessler, Notary Public, Ramsey County, Minnesota. My commission expires Nov. 27, 1982.

(Caption)

AFFIDAVIT OF DWAYNE BRONK

State of Minnesota

County of ————————ss.

I, DWAYNE BRONK, being first duly sworn upon oath, depose and state as follows:

1. My name is Dwayne Bronk. My residence is in Apple Valley, Minnesota. I am employed by the Apple Valley Police Dept.

2. During the duration of the 1977 Minnesota State Fair (Augus. 25-September 6), I was employed full-time as a police officer at the Fair by the Minnesota State Fair.

3. On or about 10:48 a.m. on August 29, 1977, the following incident took place. I, along with Officer Kurtz, also employed as a police officer by the State Fair, had several people approach our squad car in the parking area north of the Big Kahurra Skateboard Park and state that they were being harassed and badgered by two male parties who were passing out flags and demanding money. The complainants pointed out the two parties, later identified as Peter Syers and David McDonald, both members of the International Society for Krishna Consciousness, who were passing out flags and de-

manding money. We observed these two people approach cars, walk up to the driver, hand them a flag and demand a donation. The two people would stand by the doors of the cars and not let people out of them. Officer Kurtz and I also heard these two persons tell the people they were soliciting that they were collecting money which would be turned over for the benefit of the State Fair.

FURTHER AFFIANT SAYETH NOT.

Dated: Sept. 23, 1977.

DWAYNE BRONK

Subscribed and sworn to before me this 23rd day of September, 1977. — Jo Ann Hughes, Notary Public, Dakota County, Minnesota. My commission expires July 24, 1981.

(Caption)

AFFIDAVIT OF GLEN LARSON

State of Minnesota

County of Ramsey—ss.

GLEN LARSON, being first duly sworn upon oath, deposes and states as follows:

1. My name is Glen Larson. My permanent residence is 8565 Granada Avenue South, Cottage Grove, Minnesota 55016. I am currently a freshman at the Northwest Bible College.

2. On September 5, 1977, I attended the Minnesota State Fair. On that date on or about 12:40 p.m. at or near the intersection of Cooper and Commonwealth Streets on the State Fairgrounds, the following incident took place: A Hare Krishna representative gave me a flower, saying it was free but that he wanted a donation. When he found out I didn't have money, but that I wanted to keep the flower, he called me a thief and other various names. It did not seem like he was ask-

ing for donations, but rather that he was selling the flower. He said it was for developing character in young people and teaching them the fear of God.

Further affiant sayeth not.

GLEN LARSON

Subscribed and sworn to before me this —th day of September, 1977. — Jean A. Price, Notary Public, Washington County, Minnesota. My commission expires Aug. 17, 1983.

OPINION OF MINNESOTA SUPREME COURT

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., et al.,

Appellants,

49526

vs.

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, et al.,

Respondents.

Endorsed
Filed August 18, 1980
John McCarthy, Clerk
Minnesota Supreme Court

Peterson, J. Dissenting, Todd, J., Sheran, C.J., and Scott, J. Took no part, Amdahl, J.

SYLLABUS

Minnesota State Fair Rule 6.05, which is interpreted by the Minnesota state agricultural society to restrict to fixed locations on the fairgrounds all sales and distributions of merchandise, is unconstitutional as applied to members of a religious society who wish to distribute and sell religious literature and solicit donations for religious purposes throughout the public areas of the fairgrounds.

Defendants are to be enjoined from enforcing Rule 6.05 against members of plaintiff International Society for Krishna Consciousness, Inc.

Reversed and remanded with directions.

Heard, considered, and decided by the court en banc.

OPINION

PETERSON, Justice.

Plaintiffs International Society for Krishna Consciousness, Inc. (ISKCON), a religious organization, and Joseph Beca, a member of ISKCON, challenge on this appeal the trial court's refusal to declare Minnesota State Fair Rule 6.05 unconstitutional and enjoin permanently the rule's enforcement. We conclude that enforcement of Rule 6.05 against members of ISKCON would violate their constitutionally guaranteed right to free exercise of religion.

Plaintiff ISKCON maintains temples and schools throughout the world and is organized under the laws of this state as a nonprofit religious corporation. Members of ISKCON espouse the doctrines of Krishna Consciousness, a branch of the Hindu religion. Krishna Consciousness requires its followers to perform an evangelical ritual known as Sankirtan. The performance of Sankirtan consists of going out into public places to distribute or sell religious literature and to solicit donations for the support of Krishna Consciousness. The declared purposes of Sankirtan are to spread the doctrines of Krishna Consciousness, to attract new members to ISKCON, and to gain financial support for ISKCON's religious and educational activities.[1]

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[1] This case is presented to us upon stipulated facts. The parties' stipulation provides in part: "In performing Sankirtan, ISKCON devotees often greet members of the public by giving them flowers or small American flags, but for the purpose of this lawsuit they seek only to solicit contributions for their literature and their religious activities, and not for these greeting gifts. They do not seek to dance, chant, or to engage in any other potentially disruptive or disorderly conduct."

Plaintiff Joseph Beca is an ISKCON priest and the head of ISKCON's Minneapolis temple. Beca and other members of ISKCON wish to practice Sankirtan at the Minnesota state fair, an event which takes place from late August through early September of each year. Rule 6.05, as promulgated by the Minnesota state agricultural society (the society), a governmental body which has control of the state fairgrounds and responsibility for administration of the state fair, prohibits the sale or distribution on the fairgrounds of "any merchandise including printed or written material except under a license issued [by] the Society and/or from a duly licensed location."[2] The state fair's policy in applying Rule 6.05 has been to restrict all sales and distributions of materials at the fair to fixed locations on the fairgrounds. In most instances these fixed locations take the form of booths or buildings rented from the society by sellers and distributors.[3] Plaintiff

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[2] Minn. Stat. § 37.16 (1978) authorizes the society to make "all bylaws, ordinances, and rules, not inconsistent with law, which it may deem necessary or proper for the government of the fairgrounds and all fairs to be held thereon, and for the protection, health, safety, and comfort of the public thereon" and provides that "[t]he violation of a bylaw, rule, or ordinance promulgated by the society is a misdemeanor."

The president and secretary of the society are authorized to appoint "special constables or deputies * * * for the regulation of the Minnesota state fairgrounds" who "shall have and exercise upon the [state fairgrounds] all the power and authority of peace officers and, in addition thereto, may, within these limits, without warrant, arrest any person found violating any law of the state, or any rule, regulation, bylaw, or ordinance of the society, and may summarily remove the persons and property of such offenders from the grounds and take them before any court of competent jurisdiction to be dealt with according to law." § 37.20.

[3] The board of managers of the society, the members of which are defendants in this action, is vested with the management and control of the affairs of the society. § 37.04, subd. 1. One of the society's duties is to hold an annual fair upon the fairgrounds. § 37.15.

Defendant Michael Heffron, as secretary of the board of managers of the society and manager of the state fair, has responsi-

ISKCON has been notified that its members who practice Sankirtan at the fair must confine all distributions and sales of religious literature and solicitations of donations to a rented booth.

Members of ISKCON are unwilling to have their practice of Sankirtan so restricted. They wish to distribute and sell religious literature and solicit donations throughout the areas of the fairgrounds that are open to the public. In August 1977, plaintiffs, on behalf of themselves and all members of ISKCON, commenced this action under 42 U.S.C. § 1983 (1979) and Minn. Stat. § 555.01 (1978) for a judgment declaring that Rule 6.05 violates the First and Fourteenth Amendments of the United States Constitution. Plaintiffs also asked the trial court to enjoin defendant state officials from enforcing Rule 6.05 against members of ISKCON who practice Sankirtan in public areas of the fairgrounds.

The trial court issued a temporary restraining order prohibiting defendants from preventing members of ISKCON from proselytizing, distributing religious literature, or soliciting donations for religious purposes in public areas of the fairgrounds during the 1977 state fair. The trial court, however, enjoined members of ISKCON from "selling or inducing others to purchase" religious literature or items at any location within the fairgrounds other than one rented for that purpose. The parties thereafter made cross-motions for

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bility for supervising all activities at the state fair and for implementing and enforcing all state fair rules and regulations.

Defendant Harveydale Maruska, as president of the board of managers of the society, has responsibility along with defendant Heffron for appointing peace officers to enforce all state laws and all rules, regulations, bylaws, and ordinances of the society on the fairgrounds.

Defendant Warren Spannaus, the attorney general of the State of Minnesota, directs a member of his staff to prosecute those arrested at the fairgrounds for violations of state laws or of rules, regulations, bylaws, and ordinances of the society.

summary judgment based upon stipulated facts. By an order dated August 18, 1978, the trial court granted defendant's motion for summary judgment and denied plaintiffs' motion.[4] This appeal ensued.

The question presented for our decision is whether it is constitutionally permissible for defendants to apply Rule 6.05 so as to require the members of ISKCON who practice Sankirtan at the state fair confine their distribution, sales, and solicitation activities to a rented booth. The First Amendment of the United States Constitution forbids the enactment of laws prohibiting the free exercise of religion.[5] The time, place and manner of religious activity may, however, be subject to reasonable and nondiscriminatory regulation if necessary to further an important governmental interest. *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940). Defendants concede that Sankirtan is a religious activity entitled to First Amend-

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[4] The trial court's order provides:

> IT IS HEREBY ORDERED that plaintiffs' motion for summary judgment is in all respects denied. Defendants' motion for summary judgment is in all respects granted.
>
> IT IS FURTHER ORDERED that plaintiffs are prohibited from
>
> 1) Engaging in any distribution of materials (e.g., books, flowers, flags, incense, artifacts, etc.) throughout the fairgrounds, except from rented booth space;
>
> 2) Engaging in any sales or solicitation for monetary donations throughout the fairgrounds, except from rented booth space;
>
> However, plaintiffs are permitted to:
>
> Roam throughout those areas of the fairgrounds generally open to the public for the purpose of discussing with others their religious beliefs.

[5] "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." U.S. Const. amend. I. "The Fourteenth Amendment has rendered the legislatures or the states as incompetent as Congress to enact such laws." *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

ment protection.[6] They argue that Rule 6.05, as applied by them to members of ISKCON, does not offend the First Amendment because it is a permissible regulation of the place and manner of the practice of Sankirtan.

Plaintiffs do not claim that Rule 6.05 has been applied to members of ISKCON in a discriminatory fashion. What is at issue here is the reasonableness of the rule as a place and manner regulation. The application to an individual of a governmental regulation which incidentally restricts him in the exercise of a First Amendment right is permissible only if the regulation "furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *International Society for Krishna Consciousness, Inc. v. Conlisk*, 374 F.Supp. 1010, 1015 (N.D.Ill. 1973) (quoting *United States v. O'Brien*, 391 U.S. 367, 377 (1968)). The party urging that application of the regulation be upheld has the burden of proving that these criteria are met. *Elrod v. Burns*, 427 U.S. 347, 362 (1976). Defendants have not sustained that burden in this case.

Defendants assert that the state's interest in maintaining order at the state fair is sufficiently important to justify the application of Rule 6.05 to members of ISKCON. The state

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[6] Proselytism, the distribution or sale of religious literature, and the solicitation of donations by members of a religious organization who seek to attract new members and to generate financial support for the organization have long been considered activities protected by the First Amendment. *See Murdock v. Pennsylvania*, 319 U.S. 105, 110-11 (1943); *Cantwell v. Connecticut*, 310 U.S. at 305. For cases treating Sankirtan specifically as a bona fide religious practice, *see, e.g., International Society for Krishna Consciousness, Inc. v. Bowen*, 456 F.Supp. 437, 441-42 (S.D. Ind. 1978), *aff'd*, 600 F.2d 667 (7th Cir. 1979), and cases cited therein.

fairgrounds comprise approximately 125 acres. An average of 115,000 persons visit the fairgrounds each weekday while the state fair is in progress. On Saturdays and Sundays daily attendance averages 160,000. Approximately 1,400 exhibitors and concessionaires rented space at the 1977 and 1978 state fairs. We agree that these facts suggest a situation in which the state's interest in maintaining order is substantial. We have no doubt that Rule 6.05's requirement that all vendors, exhibitors, and concessionaires perform their functions at fixed locations furthers that interest significantly.

What defendants must demonstrate, however, is not the importance of the state's undeniable interest in preventing the widespread disorder that would surely exist if no regulation such as Rule 6.05 were in effect. Rather, they must establish the importance of the state's interest in avoiding whatever disorder is likely to result from granting members of ISKCON an exemption from compliance with the rule.[7]

It is fundamental that First Amendment rights may be restricted only for weighty reasons. We note that members of ISKCON are not prohibited from proselytizing throughout public areas of the fairgrounds. Some disorder is bound to attend this activity. We are not convinced that allowing ISKCON members to also distribute religious literature and accept money throughout public areas of the fairgrounds

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[7] If Sankirtan is to be practiced properly, the various activities included in the practice of Sankirtan must be performed in a peripatetic manner. Members of ISKCON therefore have a special claim to an exemption from Rule 6.05 on free exercise grounds. Commercial vendors of literature can make no similar claim.

Defendants argue that the facts as stipulated by the parties do not establish that Krishna Consciousness requires its followers to perform all of the activities comprising Sankirtan in a peripatetic manner. We recognize that in deciding this case we are limited by the parties' stipulation. We believe, however, that the peripatetic nature of Sankirtan is easily inferrable from the parties' explanation in their stipulation that the ritual is performed by "going out into public places."

would cause additional disruption sufficient to justify confining those activities to a booth.[8]

Even if we assume the importance of the state's interest in preventing the disorder that will result from allowing members of ISKCON to distribute or sell religious literature and receive donations in public areas of the fairgrounds, we are not persuaded that application of Rule 6.05 to members of ISKCON is essential to the furtherance of that interest. The state's interest can be adequately served by means less restrictive of First Amendment rights. Conduct that tends to create disorder on the fairgrounds may be specifically prohibited.

> [People may be prevented] from blocking sidewalks, obstructing traffic, littering streets, committing assaults, or engaging in countless other forms of antisocial conduct. Such restraints on a solicitor's manner of conduct

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[8] During oral argument in October 1979, defendant suggested an additional interest as justification for applying Rule 6.05 to members of ISKCON: the state's interest in protecting the privacy of fairgoers. This interest is insufficient as long as Sankirtan is practiced in such a way that fairgoers who wish to avoid it are able to do so. The United States Supreme Court "has not generally allowed government to suppress speech [or, presumably, other activity protected by the First Amendment] solely to protect unwilling listeners from 'offensive expression' unless substantial privacy interests have been invaded. * * * The 'privacy' interests of unwilling listeners are strongest in the home * * *. In public places an individual's privacy interests in avoiding offensive communications are generally thought insubstantial unless the person is deemed a member of a 'captive audience,' either because the person is literally not free to leave without great burden * * * or because the person is in a place where one cannot readily avoid exposure to the unwanted communication." L. Tribe, *American Constitutional Law*, 677, 677-78 n. 13 (1978).

In *Farmer v. Moses*, 232 F.Supp. 154, 162 (S.D.N.Y. 1964), the court considered the privacy rights of visitors to the New York World's Fair and stated: "[T]hose of us who pay the regular admission fee and attend the Fair cannot be totally insulated from our fellows, nor can we expect to be shielded from expressions or ideas which are unanticipated and unsolicited. An individual's right of privacy is of practical necessity limited by the rights of others when he leaves his home and ventures forth into public areas, even those which he must pay to enter."

> are characterized as after the fact prosecution, rather than a prior restraint on conduct. This type of sanction *after* the event assures consideration of the particular circumstances of the situation. Therefore, [a regulation should be aimed] at the *act* of obstruction itself rather than prohibiting solicitations on public sidewalks based on its desire to prevent obstruction and provide for the free flow of traffic.

Jones, "Solicitations-Charitable and Religious," 31 Bayler L. Rev. 53, 57 (1979). If the number of persons distributing and selling religious literature and receiving donations throughout the public areas of the fairgrounds becomes unmanageably large, a regulation to limit their number might be justified.[9] A place regulation less restrictive than Rule 6.05 might also be appropriate. For example, in *International Society for Krishna Consciousness, Inc. v. McAvey*, 450 F.Supp. 1265 (S.D.N.Y. 1978), the court refused to enjoin regulations establishing 10 areas at the World Trade Center in New York City within which only one ISKCON member at a time could solicit and prohibiting solicitations within 15 feet of certain designated places.[10]

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[9] In connection with this we note that the parties have stipulated that "ISKCON, while unwilling to confine its religious activities to a booth, has indicated its willingness to submit to the regulation of its members in their circulation throughout the fairgrounds to proselytize, distribute, and sell literature, and solicit contributions."

[10] The regulations upheld in *International Society for Krishna Consciousness, Inc. v. McAvey*, 450 F.Supp. 1265 (S.D.N.Y. 1978), are offered here only as an example. We do not intend to suggest that the same regulations would be appropriate at the Minnesota state fair. Regulations of the time, place, and manner of protected activity must be tailored to the forum in which such activity takes place. The state fair is not equivalent in character to the World Trade Center. Nor is it equivalent to an airport. *See, e.g., International Society for Krishna Consciousness, Inc. v. Eaves*, 601 F.2d 809 (5th Cir. 1979) (upholding a regulation requiring that the receipt of money by ISKCON members practicing Sankirtan at the Atlanta airport take place only at a booth).

Although we are limited by the record in this case, we recognize that an additional concern of defendants may involve the manner in which some members of ISKCON are reputed to practice Sankirtan. Like the problem of maintaining order, this problem can be solved by means less restrictive than confining ISKCON members' distribution, sales, and solicitation activities to a booth. Persons claiming to be members of ISKCON may be required to establish their identity and authority to act on ISKCON's behalf before being permitted to practice Sankirtan throughout the fairgrounds. *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940). Criminal and civil actions are available to remedy abuses such as fraud and battery in individual cases. *See International Society for Krishna Consciousness, Inc. v. Bowen*, 60 F.2d 667, 669-70 (7th Cir. 1979), *cert. den.*, 48 U.S.L.W. 3351 (1979).

In *Bowen*, the United States Court of Appeals for the Seventh Circuit affirmed the district court's order enjoining Indiana state fair officials from enforcing against members of ISKCON a policy of prohibiting peripatetic solicitation on the fairgrounds. We share the cogent expression of the First Amendment principle stated in these closing remarks of the court of appeals opinion (600 F.2d at 670-71):

> [W]e are not unmindful, as anyone cannot be who has travelled through a major airport facility in recent years, that practitioners of Sankirtan have been regarded as annoying and often downright irritating by those they approach. It is not, however, the cases in which the auditor is in agreement with that which is being expressed which reach the courts under the rubric of the First Amendment. Distaste for what is being expressed, and often absolute revulsion, appear to be the hallmarks of the exercise of First Amendment rights and probably

are the necessary contexts in which the preservation of those rights can be firmly assured.

The order of the trial court is reversed and remanded with directions that the trial court amend its order, in conformity with this opinion, to enjoin defendants from enforcing Rule 6.05 against members of ISKCON who wish to practice Sankirtan at the state fair.[11]

Reversed and remanded with directions.

TODD, Justice (dissenting in part).

I respectfully dissent in part from the majority opinion because, in my view, the portion of Minnesota State Fair Rule 6.05 which limits the sale of materials and collection of funds to a rented booth constitutes a reasonable time, place, and manner restriction which may constitutionally be applied to plaintiff International Society for Krishna Consciousness, Inc. (ISKCON).

The majority recognizes that religious activity may be subject to reasonable and nondiscriminatory time, place, and manner restrictions. In evaluating the validity of this type of restriction, a court must determine whether the regulation furthers a substantial governmental interest which has no relation to the content of the first amendment expression involved. Additionally, the restriction on the first amendment activity must be no greater than is necessary to further that governmental interest. *United States v. O'Brien*, 391 U.S. 367, 377 (1968). An application of this test requires the balancing of the competing interests involved and a consideration of

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[11] Since this writing, an opinion has been published in which the Supreme Court of Colorado, in a case virtually identical on its facts to this case, reached the same result as we reach here. *See International Society for Krishna Consciousness, Inc. v. Colorado State Fair and Industrial Exposition Commission*, —— Colo. ——, 610 P.2d 486 (1980).

the nature of the forum. *Lehman v. City of Shaker Heights*, 418 U.S. 298, 302-303 (1974); *Grayned v. Rockford*, 408 U.S. 104, 115 (1972). In his concurring opinion in the case of *Niemotko v. Maryland*, 340 U.S. 268 (1951), Mr. Justice Frankfurter summarized the four questions which have been considered by the United States Supreme Court in balancing competing governmental and first amendment interests. They are: (1) What is the interest deemed to require the regulation of speech (or other first amendment activity)? (2) What is the method used to achieve such ends as a consequence of which public speech is constrained or barred? (3) What mode of speech is regulated? and (4) Where does the speaking which is regulated take place? 340 U.S. at 282; *see also, Intern. Society for Krishna Consciousness v. Evans*, 440 F. Supp. 414 (S.D. Ohio 1977).

The restriction under consideration in this case, Rule 6.05, as applied, requires that the activities of distribution and sale of literature and the solicitation and accepting of donations be confined to a rented booth. The majority concludes that Rule 6.05, in its entirety, may not constitutionally be applied to the religious activities of members of ISKCON because a substantial governmental interest for the restriction has not been shown and/or because the governmental interests involved may be satisfied through less restrictive alternatives. However, in reaching this conclusion, the majority does not consider separately each activity which is restricted by the rule; namely, distribution, solicitation, sale, and collection of funds. Instead, the rule is analyzed as restricting a single form of activity. In my view, this constitutes an erroneous evaluation of the rule. Each activity which is sought to be regulated may serve a governmental interest to a greater or lesser degree and/or may serve a different governmental interest.

Additionally, each component of the rule may have a different and/or greater or lesser impact on first amendment activity. Thus, in the balance, some of the restrictions may constitute reasonable time, place, and manner regulations while others may not.

I agree with the majority's conclusion that the portions of the rule which serve to restrict the activities of solicitation and distribution of religious literature may not validly be applied to the members of ISKCON. As was noted by the majority, Rule 6.05 does not seek to regulate proselytism by ISKCON members. There is no basis in the record for distinguishing the effect of proselytism from that of solicitation and distribution of religious literature on the claimed governmental interests involved herein. The state contends that the limitation of solicitation and distribution of literature to a rented booth serves a substantial state interest in maintaining public order and minimizing crowd confusion. However, it would appear that the acts of solicitation and distribution have no greater impact on the public order than does the act of proselytism. All three acts merely involve the communication of ideas. In fact, solicitation may be viewed as one form of proselytism. Solicitation is an act, the purpose of which is to obtain support for the religion involved except that the solicitor urges financial support rather than support for religious beliefs. The distribution of religious literature also constitutes a form of proselytism through the spreading of religious beliefs by means of written words rather than oral communications. The distribution of literature may have a lesser impact on order than oral proselytism because it may take less time. Additionally, since large amounts of literature are already collected by Fair patrons, the distribution of religious literature by ISKCON members does not have any

great impact on any state concern for litter and the like. Thus, since the state expresses no substantial interest in regulating proselytism, it cannot validly claim to have any greater interest in regulating solicitation and distribution.

Therefore, these restrictions may not be justified as reasonable time, place, and manner restrictions since the acts of proselytism, solicitation, and distribution of religious literature are equally protected first amendment activities in this case. All three activities are religious activities which are required of ISKCON members. In fact, as plaintiffs urged at oral argument, these activities constitute the most important and central aspects of the Sankirtan ritual.

However, a different conclusion is required with respect to the regulation of the sales activities of and the collection of funds by members of ISKCON. Again, the state claims that the restriction of these activities to a booth serves a legitimate state interest in minimizing crowd confusion. The regulation serves this interest in a different way and to a greater extent than does the regulation of solicitation and distribution. Sales and collection activities engender additional confusion beyond that caused by solicitation and distribution because they involve acts of exchanging articles for money, fumbling for and dropping money, making change, etc. *See Intern. Soc. for Krishna Consciousness v. Eaves*, 601 F.2d 809 (5th Cir. 1979). While these activities are not incompatible with other ongoing activities at the fairgrounds, they do serve to augment an already existing crowd control problem. The substantiality of the state's interest in this regard is obvious. The crowd at the fairgrounds is concentrated in about one third of the 125-acre fairgrounds. The average daily crowd is in excess of 150,000 people. Yet, the mere recitation of numbers from the stipulation does not portray the situation. Because of the

large number of Fair patrons walking in the fairgrounds, there is confusion and congestion throughout the lanes of pedestrian traffic. Sales and collection can only serve to compound this problem. In determining that the state's interest in this regard is not substantial, the majority appears only to focus on the impact of ISKCON's activities on this problem. What the majority seems to forget is that its ruling today will allow for others engaged in first amendment activity to be excepted from the "booth rule." As plaintiffs conceded at oral argument, they stand on equal footing with other religious and political groups entitled to first amendment protection. The effect of unrestricted sales and collection on the crowd control problem at the Minnesota State Fair may, thus, readily be seen.[1]

Specifically with respect to the activities of members of ISKCON, the restriction of its sales and collection activities to a booth also serves a substantial and legitimate state interest in protecting Fair patrons from fraud, misrepresentation, and other acts of misconduct. At the 1977 Minnesota State Fair, ISKCON members were permitted by court order to distribute materials and collect donations but were denied the right to sell items away from a booth. As a result of ISKCON activity at this Fair, the Fair Staff received 234 complaints, some of which indicated that ISKCON members violated the court order by selling items outside of a rental booth under the guise of collecting donations. These complaints also show that members of ISKCON misrepresented their

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[1] *See Intern. Soc. for Krishna Consciousness v. Eaves*, 601 F. 2d 809 (5th Cir. 1979), *Edwards v. Maryland State Fair and Agricultural Society*, 476 F. Supp. 153 (D. Md. 1979), *Hynes v. Metropolitan Government of Nashville and Davidson County*, 478 F. Supp. 9 (M. D. Tenn. 1979), *Int'l. Soc., Krishna Con., Inc. v. McAvey*, 450 F. Supp. 1265 (S. D. N. Y. 1978), *Inter. Soc. for Krishna Consciousness v. Evans*, 440 F. Supp. 414 (S. D. Ohio 1977).

identities and purposes when requesting funds[2] and also solicited minors. In support of its motion for summary judgment, the state submitted affidavits which verified this misconduct. By restricting the sales and collections activities of ISKCON members to a rented booth, the state's interest in protecting fairgoers from such acts of misconduct would be served because such a rule would require ISKCON members to clearly identify themselves and their purpose and would enable the state to adequately police their activities to ensure that the members are not engaged in such acts of misconduct.[3]

The method of regulation in this case is impartial and nondiscriminatory. The rule is carefully drawn so that Fair officials can exercise no discretion when confining collection and sales activities to a booth. Fair officials cannot arbitrarily determine that some exhibitors are free to roam the fairgrounds while others are not. Nor is there any discretion given in the determination of who is entitled to rent booth space. Booths at the Fair are rented on a first-come, first-serve basis. Furthermore, the regulation is only minimally restrictive. It does not serve to prohibit any first amendment activity. The rule only limits that activity to a rented booth.

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[2] The complaints indicated that ISKCON members stated to fairgoers that they were representing the Department of Natural Resources or the State Fair or were collecting funds for needy children or agricultural schools.

[3] In footnote 8 of its opinion, the majority alludes to the claimed state interest in protecting the privacy of fairgoers and suggests that this interest is never relevant in the context of a state fair, citing *Farmer v. Moses*, 232 F. Supp. 154 (S. D. N. Y. 1964). While I find that this claimed interest is not substantially served by the regulation of sales and collection in this case, I cannot agree that the privacy interests of fairgoers may never be balanced against the interests of those engaged in first amendment activities in determining the reasonableness of a time, place, and manner regulation. *See Hynes v. Metropolitan Government of Nashville and Davidson County*, 478 F. Supp. 9 (M. D. Tenn. 1979), *Int'l. Soc., Krishna Con., Inc. v. McAvey*, 450 F. Supp. 1265 (S. D. N. Y. 1978).

Finally, the regulation of sales and collection only restricts non-communicative aspects of any exhibit's activity. It could not be more content neutral.

Thus, when the rule and the state's substantial interests in its enforcement are weighed against ISKCON's interests in this case, the reasonableness of the rule as a time, place, and manner regulation becomes apparent. Members of ISKCON have an undeniably protected interest in engaging in acts of sales and collection of funds since these are acts which are required as a part of the Sankirtan ritual. However, as plaintiffs stated at oral argument, these activities do not constitute the most central aspects of the ritual as do distribution of literature and proselytism. Thus, the regulation of sales and collection has a lesser impact on the religious activities of ISKCON members than would the regulation of distribution, proselytism, etc. Furthermore, the impact of the regulation on ISKCON activities is not great since the regulation is merely restrictive rather than prohibitive. Contrary to the statement in the majority opinion, there is nothing in the record which establishes that ISKCON members are required to perform any and all aspects of the Sankirtan ritual in a peripatetic manner. Therefore, although the regulation of sales and collection has some impact on ISKCON's religious activities, the impact is not great when compared with the substantial state interests served by the rule.

The majority concludes that even if the state has a substantial interest in enforcing its rule against ISKCON members, these interests may be served through less restrictive alternatives and, thus, the rule may not be upheld as reasonable. The majority suggests that the state's interests may be served through prohibitions of specific acts of misconduct, limitations on the numbers of those selling materials and

collecting funds throughout the fairgrounds, requirements concerning identification of ISKCON members, and through the bringing of civil and criminal actions for fraud and battery. However, in the context of the State Fair, these suggested alternatives could not viably be implemented and would only serve to increase the existing crowd control problems. All of the suggested alternatives would require Fair officials to police, in an individualized manner, specific acts of misconduct. The ability to police such activities is severely restricted if not made impossible because the fairgrounds is a large, overly-crowded area. Furthermore, the enforcing of a partial ban would entail the checking of credentials and other similar acts which would increase crowd confusion and congestion rather than ameliorate it. Additionally, all of the less restrictive alternatives would only serve to frustrate the legitimate state interest of promulgating a rule which is effective and easily enforceable. Thus, I cannot conclude that the restriction of sales and collection to a rented booth is anything less than a reasonable time, place, and manner regulation.

For the foregoing reasons, I would uphold Rule 6.05 to the extent that it restricts the sales of materials and the collection of funds to a rented booth.

SHERAN, Chief Justice (dissenting).

I agree with Mr. Justice Todd.

SCOTT, Justice (dissenting).

I join in the dissent of Justice Todd.

AMDAHL, J., not having been a member of this court at the time of the argument and submission, took no part in the consideration or decision of this case.

DEC 18
MICHAEL RODAK,

No. 80-795
IN THE

Supreme Court of the United States

October Term, 1980

MICHAEL HEFFRON, etc., *et al.*,

Petitioners,

vs.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Minnesota.

RESPONDENTS' BRIEF IN OPPOSITION.

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Question Presented.

Whether the State of Minnesota may, consistently with the first and fourteenth amendments to the United States Constitution, prohibit all persons, including those required to do so by religious duty, from distributing literature and soliciting contributions in support of political, religious, and other causes on the 125-acre grounds of the annual Minnesota State Fair open to the general public, except upon condition that such activity be limited to the physical confines of a "booth", where the state presented no specific evidence to justify such a restriction.

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No. 80-795

IN THE

Supreme Court of the United States

October Term, 1980

MICHAEL HEFFRON, etc., *et al.*,

Petitioners,

vs.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Minnesota.

RESPONDENTS' BRIEF IN OPPOSITION.

Respondents respectfully request that the Court deny the petition for a writ of certiorari to review the decision of the Supreme Court of the State of Minnesota filed on August 18, 1980.

Statement of the Case.

On August 24, 1977, respondents, plaintiffs below, International Society for Krishna Consciousness, Inc. [ISKCON] and one of its members, Joseph Beca, filed suit in the Ramsey County, Minnesota, District Court, seeking injunctive relief pursuant to 42 U.S.C. §1983 (1976) with respect to the enforcement of Minnesota State Fair Rule

6.05. The rule was challenged as invalid on its face and as applied under the first and fourteenth amendments to the United States Constitution. The defendants, petitioners in this Court, fair officials and the state attorney general, were charged with prosecuting those who violate the Fair's rules and regulations.

Respondents sought to distribute religious literature and solicit contributions to support their church in the public areas of the Minnesota State Fair [the Fair], but were prohibited from doing so by rule 6.05 which required all persons who engage in such activity to do so only from the confines of a small "booth".[1] The action was determined in the trial court upon cross-motions for summary judgment, based on a stipulation of facts [Stip.] and additional materials filed by the parties.

The parties stipulated that ISKCON is an international religious society which espouses the religious and missionary views of Krishna Consciousness, a monotheistic Hindu sect whose scriptural foundations date back 5000 years. Stip. ¶1-2.[2] ISKCON has been organized as a non-profit religious corporation under Minnesota law for two purposes: to provide an environment suitable for the spiritual life of ISKCON's "devotees", as followers are called, and to dis-

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[1]Minnesota State Fair Rule 6.05 provides:

> Sale or distribution of any merchandise including printed or written material except under a license issued for [*sic*] the Society and/or from a duly licensed location shall be a misdemeanor.

The rule has been interpreted and applied by the Minnesota State Agricultural Society, which operates and manages the Minnesota State Fair, to include all distribution of literature and solicitation of contributions and as restricting all distributors to fixed, Society-assigned booth locations, rented from the Society. See Stipulation of Facts ¶16.

[2]Petitioners assert that "ISKCON claims to be a religious organization. . . ." Petition at 4. This matter, as noted, is not a "claim", but a fact stipulated to by the petitioners.

seminate, as widely as possible, religious truth as it is known to ISKCON members. Stip. ¶¶1, 3.

The "main activity of ISKCON members is preaching Krishna Consciousness". Many go out into public places, distributing ISKCON's publications, receiving no salary for their efforts, and leading an austere life. Stip. ¶5. Going out into public places, to disseminate or sell religious literature and to solicit contributions to support the publishing, religious and educational functions of Krishna Consciousness, is a religious ritual required of ISKCON members, called *sankirtan*.[3] *Sankirtan* is directed to spreading religious belief, to attracting new members, to financing publication of religious literature, and to supporting ISKCON's other religious activities. "Donations and book sales are a principal means of support of this religious movement." Stip. ¶6.

The Fair is conducted annually for 12 days in late August and early September, on approximately 125 acres of land owned by the State of Minnesota. Stip. ¶¶10, 20. The fairgrounds are comprised of permanent buildings, parking lots, and pedestrian and vehicle thoroughfares. The Fair attracts fairgoers from all parts of Minnesota and from other states. During the past five years, the attendance at the annual fair has been about 1,320,000, averaging 115,000 each weekday and 160,000 on weekend days. Stip. ¶¶20-21.

The booth space for exhibitors at the Fair is rented on a first-come, first-served basis; approximately 1400 exhibitors and concessionaires rented space for the 1978 Fair and

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[3]While it is correct that Joseph Beca testified that neither he nor ISKCON would suffer "harm" if confined to a booth, Petition at 4, it is apparent from other questions asked at the deposition that he understood "harm" in the layman's sense of the word, meaning physical harm, rather than as the term of art used by lawyers in injunctive suits. See Deposition of Joseph Beca at 73-75 (Dec. 20, 1977).

approximately 300-500 are rejected annually for lack of space. The denials are based solely on lack of space and do not reflect discrimination for any reason, including religious or political views. Stip. ¶¶17, 18, 22. ISKCON has always been willing to have the activities of its members regulated as they circulate throughout the fairgrounds, but has urged consistently that its activities may not appropriately be confined to a booth. Stip. ¶ 23.

In addition to the stipulated facts, the parties presented affidavits in support of their motions for summary judgment. Petitioner Michael Heffron, Secretary and Manager of the Agriculture Society, reported many of the same facts concerning geography and attendance that were recited in the stipulation. In addition, he noted that 234 complaints had been received by the Fair allegedly related to the activities of Krishna Consciousness devotees during the 1977 fair. The complaints themselves were unsworn, and apparently accepted with no attempt at verification or investigation by the Fair. Four affidavits, reciting complaints gathered at the 1977 Fair, were also attached to the Fair's motion. Respondents in turn submitted affidavits indicating that the Fair solicited complaints and describing the process by which ISKCON educated its members about proper solicitation and distribution techniques.

Within a few days after the suit was filed, the district court issued a temporary restraining order permitting respondents to engage in their proposed activities at the 1977 fair. Subsequently, in 1978, respondents moved for summary judgment, seeking permanent injunctive relief similar in scope to that previously granted. Petitioners filed a cross-motion for summary judgment. On August 18, 1978, the district court issued an order and memorandum, granting petitioners' motion for summary judgment and denying respondents' motion. Petition at A-19 to A-22.

Respondents appealed to the Minnesota Supreme Court. By opinion filed August 18, 1980, Petition at A-1 to A-18, that court, sitting en banc, reversed the order of the district court and remanded with directions "to enjoin defendants from enforcing Rule 6.05 against members of ISKCON who wish to practice Sankirtan at the state fair." *Id.* at A-11 (footnote omitted). Three justices filed a partial dissent. *Id.* at A-11 to A-18.

Summary of the Argument Why the Writ Should Be Denied.

1. The decision of the Minnesota Supreme Court does not conflict with any decision of any other state court of last resort or any federal court of appeals. In fact, three other decisions of such courts have, on indistinguishable facts, reached precisely the same result as did the court below.

2. The decision of the Minnesota Supreme Court did not decide any important questions of federal law which should be settled by this Court, nor does it conflict with any applicable decision of this Court.

Rather, the court below correctly applied the teachings of this Court relating to the validity of time, place, and manner restrictions upon the exercise of first amendment-protected rights as articulated in such cases as *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969); *Grayned v. City of Rockford*, 408 U.S. 104 (1972); and *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980). Carefully following these principles, the state supreme court weighed the governmental interests against the Fair rule's infringement of expression, finding that the asserted governmental concerns were unsupported by the evidence; that, even to the extent they might be supported, the justifications for the rule were

not substantial or compelling; and that obvious, less-restrictive alternatives were available to the Minnesota Fair which would have been far more narrowly tailored to the governmental interests.

ARGUMENT SUPPORTING REASONS FOR DENYING CERTIORARI.

I.

The Decision Below Does Not Conflict With Any Appellate Decision and Is in Fact Supported by Three Other Such Decisions Directly on Point.

The first ground upon which petitioners seek the issuance of a writ of certiorari is that the decision of the Minnesota Supreme Court "is contrary to recent decisions of several other courts." Petition at 6. By so doing, the petitioners appear to attempt to bring the matter within the criteria of Sup. Ct. R. 17.1(b). There is, however, no case to be made under that rule. Each of the allegedly conflicting decisions involving state fairs[4] was rendered by a federal district court. Moreover, not only is there no conflicting appellate decision on point, but there are in fact three decisions, apart from the present one, of federal courts of appeals and a state court of last resort which reached precisely the same conclusion on the same question as did the Minnesota Supreme Court here. *Edwards v. Maryland State Fair and Agricultural Society*, 628 F.2d 282 (4th Cir. 1980), *rev'g* 476 F.Supp. 153 (D. Md. 1979) (Maryland State Fair); *International Society for Krishna Consciousness v. Bowen*, 600 F.2d 667 (7th Cir. 1979), *aff'g* 456 F.Supp. 437 (S.D. Ind. 1978), *cert. denied*, 444 U.S. 963 (1979) (Indiana State Fair), *International Society for Krishna Consciousness v. Colo-*

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[4] *International Soc'y for Krishna Consciousness v. Barber*, No. 77-CV-328 (N.D.N.Y. Aug. 25, 1980); *Hynes v. Metropolitan Gov't*, 478 F.Supp. 9 (M.D. Tenn. 1979); *International Soc'y for Krishna Consciousness v. Evans*, 440 F.Supp. 414 (S.D. Ohio 1977). See Petition at 6.

rado State Fair and Industrial Exposition Commission, 610 P.2d 486 (Colo. 1980) (Colorado State Fair).[5]

This Court has already declined to review the Seventh Circuit's decision upon the issue presented here and, as has been seen, since that time, the Fourth Circuit and the supreme courts of Colorado and Minnesota have squarely agreed with the decision of the Seventh Circuit. If certiorari was inappropriate in *Bowen, supra*, the ensuing appellate unanimity on the question would surely appear to make review even less apt now.

Petitioners essay at distinguishing *Bowen, supra*, by asserting that "unlike the instant case, the record in the Indiana case suggested that Krishna members had been singled out for punishment, criminal prosecution and harassment." Petition at 7 n.1. The reference, evidently, is to a finding of the district court in *Bowen* that plaintiffs there were taken into custody and threatened with arrest should they have persisted in violating the Indiana State Fair's "booth rule", 456 F.Supp. at 440 (finding no. 10), a rule the substantive content of which was identical to that of the Minnesota State Fair. However, not only did the district court, and certainly the Seventh Circuit, in *Bowen* not rely on this fact, but it is apparent that the petitioners read the finding itself for far more than it is worth. For the *Bowen* district court also specifically found that

> [d]efendants herein, by their policy and resolution [the "booth rule"] are attempting to treat plaintiffs like every other organization coming upon the Indiana State

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[5]Of these three cases, petitioners cite only one, *Bowen, supra*, Petition at 7 n.1, even though the decision below itself cited the Colorado Supreme Court decision referring to it as "a case virtually identical on its facts to this case" and one which "reached the same result as we reach here." Petition at A-11, n.11. The third appellate decision, the Fourth Circuit's in *Edwards, supra*, was filed six days prior to that of the Minnesota Supreme Court of which review is here sought.

> Fairgrounds for the purpose of selling or exhibiting their wares, products, merchandise and philosophy.

International Society for Krishna Consciousness v. Bowen, supra, 456 F.Supp. at 441 (finding no. 18). In context, therefore, it is clear that the actions of the Indiana State Fair to which petitioners refer did not "single[] out" the plaintiffs, but rather were merely part and parcel of the Fair's across-the-board enforcement program of its rule. The simple fact is that *Bowen* is, as the Fourth Circuit stated in another identical situation in *Edwards,* "indistinguishable".[6] *Edwards v. Maryland State Fair and Agricultural Society, supra,* 628 F.2d at 286.

The truly distinguishable decision, rather, is the only appellate decision cited by petitioners upon the ground of conflicting decisions, *International Society for Krishna Consciousness v. Eaves,* 601 F.2d 809 (5th Cir. 1979). There, the district court denied plaintiffs' motion for a preliminary injunction against enforcement of an Atlanta, Georgia, ordinance applicable at the city's airport terminal, and the denial was affirmed in part and reversed in part by the Fifth Circuit. One provision of the Atlanta ordinance was facially similar to the Minnesota fair rule at issue in the present case.

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[6]Petitioners also imply that *Bowen* may be distinguished from this case upon the ground that, while violation of the Indiana State Fair's booth rule apparently could have resulted in arrest, "the only remedy used against persons who violate the Minnesota State Fair's rule is expulsion from the fairgrounds." Petition at 7 n.1. Apart from ipse dixit, however, petitioners utterly fail even remotely to demonstrate how any such alleged differences in methods of enforcement, as opposed to substantive content, of the Indiana and Minnesota rules can possibly affect resolution of the merits of the two cases. In both situations, precisely the same restrictions on precisely the same first amendment rights were imposed. Whether by arrest or expulsion, the rules prevented the plaintiffs from engaging in their required religious exercise of *sankirtan.*

Under the ordinance in *Eaves*, although literature distribution, proselytization, and even the solicitation of donations were permitted to take place at large in the airport lobby, if such a solicitation occurred, and if a person decided to make a donation, the forwarding of the funds could only take place at a previously designated "solicitation booth". *Id.* at 836, 837-38. The Fifth Circuit affirmed the denial of the motion for preliminary injunction insofar as this provision was concerned. *Id.* at 826-30.

Several rather obvious considerations compel the conclusion that *Eaves* and the decision below in this case are not in conflict for certiorari purposes. For one, the *Eaves* decision is inherently not a final one. The ordinance there, unlike the situation here, was considered only in an interlocutory stage. This distinction is critical for two reasons. First, the respective burdens of persuasion are notably different. Since the district court in *Eaves* had denied the preliminary injunction motion, the Fifth Circuit necessarily reviewed that decision only on an abuse of discretion standard and indeed explicitly noted as much. *Id.* at 828. Moreover, since plaintiffs there had not gone beyond a request for interlocutory relief, a more stringent showing on their part was necessary than would have otherwise been the case.

> But in this case appellants were asking for a preliminary injunction; that makes it more difficult for them to obtain relief against the solicitation booth provisions. *See, e.g., Compact Van Equipment Co. v. Leggett & Platt Inc.*, 566 F.2d 952, 954 (5th Cir. 1978).

Id.

Second, the *Eaves* court noted that, upon remand, it would be entirely open to plaintiffs to present evidence which would require invalidation of the ordinance. *Id.* at 830. Up to that point, they had chosen not to do so, and had only "attack[ed] [the] restriction on its face. . . ." *Id.*

at 826. Thus, only if such a procedure were to take place, and only if the ordinance were to be finally upheld by the Fifth Circuit, would a conflict even arguably be created. At the present tentative interlocutory stage of the *Eaves* case, there is no true conflict ripe for resolution by this Court. No necessity has yet appeared so as to require the exercise of this Court's power of review.

In any event, the substantive scope of the Atlanta ordinance is markedly different from that of the Minnesota rule here considered. The Atlanta restriction at issue in *Eaves* permitted the dissemination of literature and the solicitation of donations throughout the Atlanta airport lobby and restricted to a "booth" only the physical transfer of money. Finding that the Atlanta ordinance applied only to the "mechanical, non-communicative aspects of transferring money," the court found that the regulations faced a lower first amendment hurdle. *Id.* at 828. Here, to the contrary, the Minnesota enactment applies broadly to the clearly protected activities of solicitations and distribution of materials, including literature, Petition at 3, neither of which was even implicated by the *Eaves* ordinance.

Moreover, the places to which the respective regulations apply are entirely different. Both law and common sense dictate this difference as an important distinguishing feature. As the *Eaves* court noted

> [i]n an airport — unlike a park, for example — "free movements" are likely to be almost as regular and predictable as those of people entering and leaving a building.

Id. at 831.

By contrast,

> [a]s has been aptly said, a "fair is almost by definition a congeries of hawkers, vendors of wares and services, and purveyors of ideas, commercial, esthetic and intellectual."

> *ISKCON v. State Fair*, 461 F.Supp. 719, 721 (N.D. Tex. 1978). Tidiness and tranquility are not qualities ordinarily found at fairs. . . .

Edwards v. Maryland State Fair and Agricultural Society, supra, 628 F.2d at 286.

For first amendment purposes, therefore, the interior of an airport lobby is not truly comparable to a state fair which sprawls over some 125 acres; the latter is, indeed larger than many parks, and fulfills functions quite distinct from those of an airport. As this Court has emphasized,

> [t]he nature of a place, "the pattern of its normal activities, dictate the kinds of regulations of time, place and manner that are reasonable." Although a silent vigil may not unduly interfere with a public library, *Brown v. Louisiana*, 383 U.S. 131 (1966), making a speech in the reading room almost certainly would. That same speech should be perfectly appropriate in a park. The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time.

Grayned v. City of Rockford, 408 U.S. 104, 116 (1972).

That the "nature" of airports and state fairgrounds and the "pattern of [their] normal activities" differ greatly from each other should go without saying. The Minnesota Supreme Court recognized precisely this point when, citing *Eaves*, it observed that "[t]he state fair is not . . . equivalent

to an airport," Petition at A-10 n.10.[7] Hence, under settled

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[7]For the same reason, the other district court decisions cited by petitioners, *United States v. Boesewetter*, 463 F.Supp. 370 (D.D.C. 1978) (Kennedy Center lobby) and *International Soc'y for Krishna Consciousness v. McAvey*, 450 F.Supp. 1265 (S.D.N.Y. 1978) (World Trade Center) also do not support the proposition they attempt to reach. Indeed, the Minnesota Supreme Court itself used *McAvey* as illustrative of "[a] place regulation less restrictive than Rule 6.05" which "might . . . be appropriate." Petition at A-9. But the court cautioned that the *McAvey* regulations, which were dissimilar to the Minnesota rule, were

> offered . . . only as an example. We do not intend to suggest that the same regulations would be appropriate at the Minnesota State fair. Regulations of the time, place, and manner of protected activity must be tailored to the forum in which such activity takes place. The state fair is not equivalent in character to the World Trade Center.

Id. at A-10 n.10.

In *McAvey*, moreover, the defendants proved by extensive expert testimony that compelling interests required the specific limitations on speech in interior areas of the World Trade Center complex, at least sufficiently to permit the court to deny a preliminary injunction against enforcement of the regulations, particularly in view of the fact that they permitted the plaintiffs to engage in peripatetic speech activities in many other areas of the facility. None of these factors are present here: no expert testimony of the kind involved in *McAvey* was adduced; the case concerned a final, not a preliminary, injunction; and the rule at issue permits "roving" activity nowhere at the fair.

Nor could *Boesewetter*, *supra*, even arguably create a conflict, even were it an appropriate decision for rule 17.1(b) purposes. That decision was expressly "limited . . . to the narrow question of the constitutionality" of a federal regulation which prohibited the sale or distribution of newspapers, leaflets, and pamphlets in the interior of the Kennedy Center. 463 F.Supp. at 373. The court held that such an "absolute ban" was impermissible. *Id.* It only then suggested, citing *International Soc'y for Krishna Consciousness v. Evans*, 440 F.Supp. 414, 424 (S.D. Ohio 1977), see *supra* note 4, that, under certain conditions, "distribution of religious literature perhaps may be limited" to "sales booths". 463 F.Supp. at 373. The court immediately recognized, however, that such a regulation had been rejected in a case involving the Pittsburgh airport. *International Soc'y for Krishna Consciousness v. Griffin*, 437 F.Supp. 666, 673 (W.D. Pa. 1977).

Thus, not only is the dissimilarity of the Kennedy Center lobby to the Minnesota State Fair grounds immediately obvious, but the *Boesewetter* district court's booth suggestion was made in only the most tentative possible dictum. Certainly on this basis no conflict can arise.

principles, no apt constitutional comparison is possible.[8]

II.

The Decision Below Correctly Applied "Time, Place, and Manner" Principles Long Settled by This Court.

Petitioners also apparently contend that the federal question decided by the Minnesota Supreme Court was so inherently important as to require that certiorari be granted, or that the decision conflicts with previous decisions of this Court. Sup.Ct.R. 17.1(c). Examination of the decision, however, rather quickly reveals that neither of these criteria calls for allowance of the writ in this case. The state supreme court here simply acted pursuant to well-established principles of law relating to restrictions on the time, place, and manner of the exercise of first amendment-protected rights.[9]

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[8]Further, the evidence in *Eaves* at the hearing of the preliminary injunction consisted of the uncontroverted affidavit of the airport manager, who specifically pointed to serious problems caused by the mechanical exchange of money. *Id.* at 829. Explicitly noting the appellants' opportunity to challenge the affidavit at trial, the court even went so far as to suggest the direction the rebuttal might take. However, given the state of the evidence and the deference to be accorded the trial court's denial of a preliminary injunction, the booth limitation was upheld. *Id.* at 829-30.

The evidence presented in *Eaves*, the affidavit of the airport manager, focused on the disruption caused by exchange of money and the regulation sustained addressed only that activity. In the present case, the record is devoid of any such specific evidence. Rather, the fair manager referred in only the most conclusory terms to "[t]he congested conditions on the enclosed fairgrounds during the annual State Fair," Affidavit of Michael Heffron at 2, ¶7, and engaged in insubstantial speculation unrelated to the facts of the case as to the effects of the claimed congestion. *Id.* at 5, ¶18. Here, as in *Edwards*, "[o]n this record, crowd control and the state's interest in public safety are not shown to compel the rule." *Edwards v. Maryland State Fair and Agricultural Soc'y, supra*, 628 F.2d at 286.

[9]Both the solicitation of contributions, *see, e.g., Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980) (charitable solicitations); *Cantwell v. Connecticut*, 310 U.S. 296 (1940) (religious solicitations), and the distribution of literature, *see, e.g., Schneider v. New Jersey*, 308 U.S. 147 (1939); *Lovell v. City of Griffin*, 303 U.S. 444 (1938), are activities protected by the first amendment.

It correctly held that the Minnesota State Fair rule which required that all solicitations and distribution of literature at the Fair be limited to the physical confines of a "booth" was inconsistent with those principles. The court below found that the evidence, or lack thereof, adduced by the Fair in support of its rule provided insufficient justification for the broad restriction it imposed. The petitioners would have this Court reweigh the evidence somehow to produce the opposite result. Such an exercise is entirely unnecessary.

The general framework for the first amendment analysis of restrictions on speech such as that of the Minnesota State Fair at issue here was synthesized in *Grayned v. City of Rockford*, 408 U.S. 104 (1972). Although "reasonable 'time, place and manner' regulations may be necessary to further significant governmental interests, and are permitted," *id.* at 115 (footnotes omitted), the concept of "reasonableness" takes on a special coloration in this context.

> Our cases make clear that in assessing the reasonableness of a regulation, we must weigh heavily the fact that communication is involved; the regulation must be narrowly tailored to further the State's legislative interest. Access to the "streets, sidewalks, parks, and other similar public places . . . for the purpose of exercising [First Amendment rights] cannot constitutionally be denied broadly. . . ." Free expression "must not, in the guise of regulation, be abridged or denied."

Id. at 116-17 (footnote omitted) (bracketed material and ellipses in the original). Thus, the state

> may serve its legitimate interests, but it must do so by narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms. . . . "Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone. . . ."

Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 637 (1980) (citations omitted) (internal ellipsis in the original), *quoting NAACP v. Button*, 371 U.S. 415, 438 (1963). To be valid, a "time, place, and manner" restriction must therefore be "narrowly tailored to further [the state's] compelling interests." *Grayned v. City of Rockford, supra*, 408 U.S. at 119. Viewed in this light, Minnesota's booth rule is seen indeed to be "an impermissibly broad prophylactic. . . ." *Id.*

> Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.

Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 513 (1969). The booth rule is not tailored, as was, for example, the school anti-noise ordinance in *Grayned, supra*, or the judicial obstruction statute in *Cox v. Louisiana*, 379 U.S. 559 (1965), to interdict activities which disrupt or interfere. It is, instead, an across-the-board restriction on protected speech applicable whether or not there is plausible reason to believe that legitimate state interests are cognizably threatened.

In particular, the Minnesota Supreme Court, upon examination of the record, concluded that the interests under

the rubric of which the state seeks to justify the rule were insufficient. Petitioners present no reason for that judgment to be further reviewed, much less overturned, by this Court. Not only do they employ the wrong equation in balancing the interests at stake, but they define the state interests far too broadly and abstractly and weigh them against respondents' individual interests instead of against the first amendment interest in providing maximum opportunities for expression. Moreover, in balancing the interests, petitioners ignore the requirement that less restrictive alternative regulations must be adopted if available, undoubtedly because such alternatives are not only obvious in the present case, but were proposed by the petitioners themselves.

At the outset, it should be noted that respondents have never sought by this action to carve out a special exception for themselves and obtain special privileges unavailable to others. Instead they have urged that rule 6.05 is overly restrictive of political and religious speech because the fairgrounds could easily accommodate not only individuals speaking from fixed locations, but also people moving from place to place. Respondents have not suggested that such activities cannot be regulated, perhaps by limiting the total number of persons who might be involved, much as there is now a limit on the number of booths which can be accommodated at the Fair. Petition at A-9 n.9.

The interests asserted by petitioners include (1) minimizing congestion; (2) providing a fair and neutral rule; (3) preventing unwanted communication; and (4) preventing misconduct and fraud. All of these were argued to the Minnesota Supreme Court and found wanting.

(1) *Minimizing Congestion*. Although petitioners refer to the need to reduce congestion, and the possible dangers which might conceivably result from overly congested fairgrounds, there is simply no evidence that activity of the

kind proposed by respondents would measurably affect pedestrian traffic at the Fair. On the contrary, because petitioner can point to nothing in the record to establish that increased congestion or dangerous conditions resulted from respondents' activities at the 1977 Fair, they rely instead on vague generalizations and abstract statements. See Petition at 14. The rule cannot be justified upon such speculation. "[U]ndifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 508 (1969). The result reached by the Minnesota Supreme Court is entirely in accordance with the rejection by the Fourth and Seventh Circuits of the same argument in indistinguishable circumstances. *Edwards v. Maryland State Fair and Agricultural Society*, 628 F.2d 272, 286 (4th Cir. 1980); *International Society for Krishna Consciousness v. Bowen*, 600 F.2d 667, 669 (7th Cir.), *cert. denied*, 444 U.S. 963 (1979). Certainly the mere recitation of attendance figures and areas, see Petition at 12-13, does not prove petitioners' point.

Petitioners' argument from favoritism, see *id.* at 15, must, as noted, also be rejected. It borders, indeed, on the frivolous to assert that the fact that a successful challenge by one group to a broad restriction upon expressive activity is to be viewed as a "request for special dispensation." The cases cited by petitioners, *Fowler v. Rhode Island*, 345 U.S. 67 (1953) and *Niemotko v. Maryland*, 340 U.S. 268 (1951), only serve to underscore the futility of their argument.

Petitioners also fail to recognize the existence and significance of alternatives less restrictive than the general confinement of expression at the Fair to a booth. *See, e.g., Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 637-38 (1980); *Schneider v. New Jersey*, 308 U.S. 147, 164 (1939). Indeed, in the trial court, the

petitioners themselves suggested several alternatives, including a limitation on the number of individuals who might engage in expression like that proposed by respondents and more carefully drawn area restrictions, which would amply satisfy any legitimate state interest. Defendants' Memorandum in Support of Cross Motion for Summary Judgment at 14-15, *International Society for Krishna Consciousness v. Heffron*, No. 421843 (Minn. Dist. Ct. Aug. 18, 1978), *rev'd*, No. 49526 (Minn. Aug. 18, 1980). Moreover, the Fair's willing acquiescence in the policy allowing oral expression (except for solicitation), but not dissemination of printed material, belies any claim that the booth restriction is justiifed because of congestion. Congestion is no more likely to be caused by leafletting or soliciting that it is by oral advocacy, as the court below recognized. Petition at A-7 to A-8.

(2) *Inherent Fairness of Rule*. Petitioners next argue that "[t]he difficulties of providing traditional police power protection by the State Fair would, of course, be greatly magnified if all religious, political and press organizations were permitted to solicit money and distribute materials randomly on the fairgrounds." Petition at 17. They claim that the across-the-board booth rule is "[t]he most reasonable, the most fair, the most neutral, the most ordered manner by which . . . competing interests can be accommodated." *Id.*

The fallacy of these contentions was well stated recently by Judge Winter, speaking in the virtually identical case regarding the Maryland State Fair.

> Tidiness and tranquility are not qualities ordinarily found at fairs, nor are they qualities enshrined in the First Amendment. If others undertake to exercise First Amendment rights at the Maryland State Fair, well and good. The state retains the right to protect substantial

> state interests by the least restrictive effective regulation, and if the exercise of constitutional rights either by plaintiffs or others who may come upon the scene endanger state interests, defendants are not without authority to act. In short, we decided this case strictly on the record before us, and we decline to speculate as to abuses which may occur in the future.

Edwards v. Maryland State Fair and Agricultural Society, 628 F.2d 282, 286-87 (4th Cir. 1980).

As noted, one such alternative was suggested below by the petitioners themselves and stated by the court. "If the number of persons distributing and selling religious literature and receiving donations throughout the public areas of the fairground becomes unmanageably large, a regulation to limit their members might be justified." Petition at A-9 (footnote omitted). Such a system, if indeed some predicate therefor not now appearing were shown to exist, would have all the virtues of fairness and neutrality which petitioners extol, while at the same time maximizing the opportunities for speech. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). *See also, e.g., Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 756-57 (1976). The rule the invalidity of which was perceived by the Minnesota Supreme Court impermissibly places unnecessary restrictions on the communication of ideas to willing listeners. If cannot be justified by the paternalistic and myopic view advanced by petitioners.[10]

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[10]Petitioners also complain of the Minnesota Supreme Court's finding that "[i]f Sankirtan is to be practiced properly, the various activities included in the practice of Sankirtan must be performed in a peripatetic manner." Petition at A-7 n.7. See Petition at 16. The assertion is at best a straw man, however, since the finding was stated only in dictum. Petitioners can hardly expect, in any event, that a grant of certiorari is justified to reverse a finding that the state supreme court noted, and quite correctly so, was "easily inferrable from the record." Petition at A-7 n.7.

Moreover, the argument that petitioners seek to extrude from the finding, that other persons may also seek to engage in peripatetic expressive activity, is not only without support in the record, but does not logically relate to the premise.

(3) *Prevention of Unwanted Communication.* Petitioners further argue that the booth rule is essential to the prevention of unwanted communication of ideas to fairgoers. Petition at 18-20.

There is, however, no generalized "right of privacy" to be free from being approached by others in public places. *See Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 638-39 (1980). Thus, while it cannot be gainsaid that government may permissibly regulate expression to serve privacy interests when the speaker invades the sanctity of the home, *see, e.g., Rowan v. United States Post Office Department*, 397 U.S. 728, 738 (1970) (mailing into home against previously expressed desire of householder), or in situations where the audience may properly be characterized as "captive", *see, e.g., Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974) (passengers on city buses), the analogous governmental interest in open public places, such as a fair, is attenuated at best. *See, e.g., Organization for a Better Austin v. Keefe*, 402 U.S. 415, 420 (1971) ("the right of privacy" was "not shown" where there was no attempt "to stop the flow of information into [one's] own household, but to the public.") The court below correctly applied these principles. Petition at A-8 n.8.

In a place such as a state fair, as in a park or on a street, the "unwilling listener" problem generally does not exist, for a person in potentially such a position is fully capable simply of saying "no" to the prospective speaker and continuing on his way. *See Spence v. Washington*, 418 U.S. 405, 412 (1974) (per curiam) (public display of possibly offensive altered American flag); *Cohen v. California*, 403 U.S. 15, 21 (1971) (wearing in courthouse of jacket bearing offensive slogan).

Generally, as Justice Harlan stated,

> [t]he ability of government, consonant with the Constitution, to shut off discourse solely to protect others from hearing it is . . . dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner.

Id.

The present record is devoid of anything even approaching such a rigorous showing and the burden of demonstrating the existence of "essential intolerability" is especially heavy where public places are concerned, "for example, [in a] stroll[ ] through Central Park." *Id.*

The petitioners admit that "patrons have the freedom to reject any Krishna solicitation and walk away . . . ." Petition at 19. This alone should defeat their claim. *See Edwards v. Maryland State Fair and Agricultural Society*, 628 F.2d 282, 286 (4th Cir. 1980) ("[A] person present [at a state fair] is fully capable of refusing any solicitation and continuing on his way.") Their assertion that "the only certain means that patrons have for avoiding repeated solicitations by the same or other ISKCON members as they roam the fairgrounds would be to leave the fair itself," Petition at 19-20, does not alter the result. There is nothing in the record to demonstrate the existence of such a dichotomy. Absent such a showing it cannot be assumed that the open grounds of a state fair are anything quite like the straitjacket petitioners unconvincingly portray. Moreover, the play required by the first amendment is antithetical to the notion of "certainty" that the state proposes. *See Cohen v. California, supra.*

Moreover, in this area, as in other first amendment contexts, even where a showing of potential endangerment of privacy has been made, but where a less restrictive means of protecting the interest exists, the state may not choose a broader restriction that would unnecessarily restrict the

exercise of first amendment rights. Indeed this Court has shown that such analysis is required even where the *sanctum sanctorum* of the home is involved. *See Martin v. City of Struthers*, 319 U.S. 141 (1943) (ordinance prohibiting door-to-door canvassing unconstitutional where city could have prohibited such canvassing only after the householder previously indicated a wish not be be disturbed). *Compare Lamont v. Postmaster General of the United States*, 381 U.S. 301 (1965) *with Rowan v. United States Post Office Department, supra* (statute which placed burden on recipient to request delivery of certain mail unconstitutional, but one which permitted recipient affirmatively to stop delivery upheld).

In the present case, less restrictive alternatives which would enable the state to serve its cognizable interests in this area are readily available. For example, if the Fair appropriately determines that persons in a queue or those seated at performances constitute a "captive audience", approach of such persons by speakers might be specifically prohibited. *See International Society for Krishna Consciousness v. Bowen*, 456 F.Supp. 437, 445 (S.D. Ind. 1978), *aff'd*, 600 F.2d 667 (7th Cir.), *cert. denied*, 444 U.S. 963 (1979) (similar requirement imposed by uncontested condition on injunction against operation of booth rule). As noted, however, no analogous state interest exists with respect to fair patrons at large and mobile on the fairgrounds. In such cases, the "right of privacy" cannot serve as a mechanism greatly to restrict the ability of speakers to communicate with willing listeners.

(4) *Prevention of Misconduct*. Finally, it is said that the booth rule is necessary to prevent "deceptions, fraud and other misconduct", of which petitioners claim there is "uncontroverted evidence". Petition at 20.

First, the only such "evidence" which was even arguably properly before the Minnesota courts on this issue consists of the sworn affidavits to which petitioners refer.[11] *Id.* at 21.[12] The other allegations made by these un-cross-examined affiants were given no weight either by the trial court or the state supreme court, and this Court is not the proper forum for the credibility of such "evidence" to be redetermined. It is established, in any event, that particular instances of misconduct cannot serve as the predicate for a restraint which would abridge the first amendment rights of all. *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 720 (1931). *See, e.g., Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558-59 (1975). Thus the federal courts of appeals to which the same argument has been presented have correctly rejected it. *Edwards v. Maryland State Fair and Agricultural Society*, 628 F.2d 282, 285-86 n.2 (4th Cir. 1980). *See International Society for Krishna Consciousness v.*

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[11]Petitioners are incorrect in claiming that the evidence of complaints was unrebutted. The affidavits filed by the Fair were not based, for the most part, on first-hand observations. Only four complaints were presented by means of affidavit, recounting the experiences of members of the public attending the Fair. Elizabeth Ann Murphy reported that a contribution was demanded for a hard-bound book, as did William Paddock. Michael Gene Krogness related that he was approached by a person he believed to be a member of ISKCON who represented that he was with a state agency. Glenn Larson complained that he was called names after declining to make a contribution.

The complaints were counterbalanced with affidavits of David Ewert, who reported that he encountered individuals engaged in an effort to provoke complaints against ISKCON devotees, and affidavits of Joseph Beca and Thomas Kerr, describing the methods they, as ISKCON devotees, used in soliciting Fair patrons.

[12]Petitioners cannot seriously expect this Court to consider the "unsworn complaints", Petition at 20, referred to by the fair manager or any factual matters in another, wholly different, action, *International Soc'y for Krishna Consciousness v. Barber*, No. 77-CV-328 (N.D.N.Y. Aug. 25, 1980), which was decided after the opinion of the Minnesota Supreme Court was filed and to which no factual relationship to the present case was asserted below or is now shown. Respondents object to petitioners' attempt to use these obviously inapplicable matters.

Bowen, 600 F.2d 667, 669 (7th Cir.), *cert. denied*, 444 U.S. 963 (1979).

Also long established is the rule that a far less intrusive and restrictive method is available by which the state interest at issue may be served. "Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly." *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 637 (1980). *Accord, e.g., Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940); *Schneider v. New Jersey*, 308 U.S. 147, 164 (1939).

Without acknowledging its source, petitioners recognize the existence of the principle, but implicitly invite this Court to repudiate it. Petition at 22. Here, too, the federal appellate courts have held that the prospect of fraud or misrepresentation is insufficient to justify the broad booth rule in the state fair context. *Edwards, supra*, 628 F.2d at 286; *Bowen, supra*, 600 F.2d at 669-70.[13]

Decrying the criminal remedy as "too simplistic and impractical", petitioners assert that imposition of a booth would make the state's job "unquestionably much easier. . . ." Petition at 22.

However, it is beyond doubt that the state may require a person, "before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent." *Cantwell v. Connecticut, supra*, 310 U.S. at 296; *accord, Hynes v. Mayor of Oradell*, 425 U.S. 610, 618-19 (1976); *Martin v. City of Struthers*, 319 U.S. 141, 148 n.14 (1943). A provision of this kind should be sufficient to enable the state

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[13]The correctness of the district court's holding in *Barber, supra* note 22, to which petitioners refer, Petition at 23, is thus open to very serious question. In any event, no record of the kind relied upon by the *Barber* court exists here.

to enforce the penal laws in this area. But "[i]f it is said that these means are less efficient and convenient" than is the booth rule for this purpose, "the answer is that considerations of this sort do not empower a [state] to abridge freedom of speech and press." *Cf. Schneider v. New Jersey, supra,* 308 U.S. at 164 (discretionary permit issuance). Therefore, "the ease of administering the 'booth rule' . . . [is not a] consideration[ ] which save[s] the rule." *Edwards, supra,* 628 F.2d at 287. For the state simply to speculate that an overbroad restriction may aid in penalizing the few who may violate penal laws does not support its general imposition.

Conclusion.

For these reasons, the petition for a writ of certiorari should be denied.

DATED: December 18, 1980.

Respectfully submitted,

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No. 80-795

IN THE

Supreme Court of the United States

October Term, 1980

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, the Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,
Petitioners,

vs.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., and JOSEPH BECA, on behalf of themselves and THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS members,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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QUESTION PRESENTED

May the International Society for Krishna Consciousness and its members be exempt, under the First Amendment, from a Minnesota State Fair rule which requires that all persons or organizations who solicit money or sell or distribute materials during the annual 12-day fair do so only from a fixed location on the fairgrounds, when that rule is applied equally to all persons without regard to the content of their materials or religious beliefs?

PARTIES IN PROCEEDINGS IN MINNESOTA SUPREME COURT

There has not been any change in the parties participating in this case since the issuance of the Opinion of the Minnesota Supreme Court.

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IN THE

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Petitioners,

vs.

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Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF FOR PETITIONERS

OPINIONS BELOW

The Opinion of the Minnesota Supreme Court is reported as *International Society for Krishna Consciousness, Inc. v. Heffron, et al.*, 299 N.W.2d 79 (Minn. 1980). A copy of that Opinion also is found in the Joint Appendix hereto. (J.A. 58.) The Judgment and Order of Ramsey County District Court, state trial court, is unpublished but comprises Appendix B to the Petition for Writ of Certiorari to the Supreme Court of The State of Minnesota.

JURISDICTION

The Opinion of the Minnesota Supreme Court was filed August 18, 1980. This Court's order granting a writ of certiorari to review the Minnesota court's decision was issued January 19, 1981. In this case the highest state court in Minnesota ruled that Minnesota State Fair Rule 6.05, which has the force and effect of state law, is invalid as to respondents International Society For Krishna Consciousness, Inc. and its members under the First Amendment to the United States Constitution. The jurisdiction of this Court rests on 28 U.S.C. § 1257(3) (1980).

LAW AND CONSTITUTIONAL PROVISIONS IN QUESTION

Rule 6.05 (hereinafter "booth rule") of the Minnesota State Fair provides:

> Sale or distribution of any merchandise, including printed or written material, except under license issued [by] the Society [State Fair] and/or from a duly-licensed location shall be a misdemeanor.

The State Fair has the statutory authority to promulgate and enforce such rules under Minn. Stat. § 37.16 (1980). Rule 6.05 restricts the solicitation of funds and the distribution of materials by any person or organization to booths or similar fixed locations on the state fairgrounds. The parties agree that this is the proper interpretation of the rule, and it has been so interpreted by the Minnesota Supreme Court. *International Society For Krishna Consciousness v. Heffron*, 299 N.W.2d at 81-82; Stipulation of Facts at para. 16. (J.A. 34.)

The Minnesota Supreme Court held Rule 6.05 to be violative of the Krishnas' rights of free speech and free exercise of religion under the First Amendment to the United States Constitution, which provides in pertinent part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of people peaceably to assemble, or to petition the government for a redress of grievances.

The foregoing proscriptions apply to the states by virtue of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

This case centers on whether the Minnesota State Fair's booth rule may be applied, under the free speech and free exercise of religion clauses of the First Amendment, to members of the International Society For Krishna Consciousness (hereinafter "Krishnas" or "ISKCON"), an international religious organization. Based on a record of stipulated facts (J.A. at 30), a deposition of one of the Krishnas and several affidavits, the state trial court held that the booth rule could constitutionally be applied to the Krishnas and, thus granted summary judgment to the State Fair.[1] By a 5-3 decision,[2] the Minnesota Supreme Court reversed that judgment.

A. Minnesota State Fair.

During the late summer of each year the 12-day Minnesota State Fair is held on the enclosed state fairgrounds permanently located in St. Paul, Minnesota. This permanent facility occupies about 125 acres comprised chiefly of numerous permanent buildings, temporary structures, a race-track, carnival-type rides and parking lots, all surrounded by a chain-link fence connecting several entrance gates. (J.A. 25-27.)

Approximately one-third of the total fairgrounds acreage (i.e., 40-45 acres) constitutes the area generally occupied by the persons who attend, participate in and work at the fair. (J.A. 25.) The remaining area of the fairgrounds is utilized for housing, administration, storage, parking and other sup-

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[1] Petitioner Michael Heffron is the secretary-general manager of the Minnesota State Fair.

[2] Three justices of the Minnesota Supreme Court dissented in part, primarily on the basis that they would have sustained the booth rule as it applies to sales and collection of money or donations. ISKCON v. Heffron, *supra* at 85.

port activities. Thus, the annual fair tends to be constantly crowded. For example, during the five years preceding the decision of the trial court the average total attendance at the annual fair had been about 1,320,000. (J.A. 35.) The average week-day attendance had been 115,000, and the average daily attendance on weekends had been 160,000. (J.A. 35.)

The Minnesota State Fair is charged with providing an annual event that promotes "agriculture, horticulture, stock-breeding, manufacturers, and the mining, mechanical and industrial arts and sciences." Minn. Stat. § 37.15 (1980). Typically these purposes are represented by competitive livestock and crafts exhibits; exhibits of farm machinery and numerous garden, farm and manufactured products; concessions selling food and other products; carnival games and rides; and various entertainment performances (car races, singers, bands, etc.). Because of the booth rule all of these activities are carried out only from fixed locations. None of the exhibits or concession products, even those from religious, political and news media participants, are sold or distributed peripatetically throughout the fairgrounds. All participants at the fair are allocated fixed locations or booths from which they sell, distribute or exhibit their products. During the 1977 and 1978 fairs approximately 1,400 exhibitors and concessionaires rented booth spaces from the fair. (J.A. 35.) The State Fair's space rental system is grounded on a "first-come, first-served" philosophy; that is, those who apply for fairgrounds booth space are accepted in the chronological order of the dates of their applications. (J.A. 35.) The space rental fee is a fixed rate applicable to all concessionaires and exhibitors, based upon the sizes and locations of their booth spaces. (J.A. 27, 35.)

Since the number of space rental applicants each year exceeds the number of available booths, many applications are turned down and placed on a waiting list. Approximately 300-500 applicants for fairgrounds' concessions or exhibits are rejected annually solely because of lack of space. (J.A. 35.)

B. The Booth Rule And ISKCON.

Under Rule 6.05 the State Fair requires that the sale of any product, the solicitation of money and the distribution of all materials be done only at a rented booth or similar fixed location.[3] The rule, however, does not prohibit anyone who pays the customary Fair admission fee from proselytizing or discussing freely his or her beliefs on any subject while walking throughout the fairgrounds. (J.A. 28, 34.)

This rule is applied equally to all persons and groups on the fairgrounds. No organizations are singled out by the rule for any favored or unfavored treatment. In 1977, for example, the State Fair offered to rent booth space to the Krishnas for the purpose of carrying out their sales and solicitations activities. (J.A. 36.)

For many years the State Fair has rented booth space to at least 40 organizations of a religious, political, journalistic and charitable nature. Michael Heffron Affidavit of July 27, 1978, para. 10 and Exhibit "A", (J.A. at 46, 49-52). Examples of such organizations include: Abortion Rights Council of Minnesota, American Party of Minnesota, Church of Christ, Faith Broadcasting Network, Independent Republicans of Minnesota, Minnesota Conference of Seventh Day Adventists,

[3] The booth rule has been a provision in the State Fair booklet of rules and regulations since at least 1966. It was also carried in the rules booklet in a similar form prior to that date.

Salvation Army, Association of Evangelical of Greater St. Paul, Christian Educational Service, Minnesota Citizens Concerned For Life, Lutheran Colportage Service, Minnesota State D.F.L. Central Committee, Christian Research Group, Inc. and various Minnesota newspapers and broadcast media. *Id.*; Heffron Affidavit of August 25, 1977, at para. 12 (J.A. at 49-52).

ISKCON and its members seek to be exempted from the booth rule because of their status as a religious organization. They engage in a religious activity called Sankirtan under which the Krishnas go out into public places to chant and dance and to disseminate or sell religious literature and to solicit financial contributions. Stipulation of Facts at paras. 5 and 11, (J.A. 32).[4] The purpose of Sankirtan is to seek converts to Krishna Consciousness, spread "truth" and collect money for its religious, educational and publishing activities. *Id.* The Krishnas claim that they should be permitted to perform their sales, solicitations and distribution activities on a roving basis throughout most public areas of the fairgrounds and, thus, not be limited to a fixed location. The Krishnas, however, do not propose to chant, dance or sing in a peripatetic manner at the Minnesota Fair.

C. The 1977 Minnesota Fair And ISKCON.

The underlying controversy commenced on August 24, 1977, one day before the beginning of the 1977 Minnesota Fair, when the Krishnas filed and served their complaint and moved for a temporary restraining order against enforcement of the booth rule. The state district court judge granted the motion

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[4] The Minnesota Supreme Court interpreted the stipulated phrase, "going out into public places," as meaning peripatetic conduct. ISKCON v. Heffron, *supra* at 83, n. 7.

to the extent it sought to allow the Krishnas to proselytize, collect "donations" and distribute their materials in a peripatetic manner. The Court's order, however, prohibited the Krishnas from engaging in any "sales" activities except from a rented booth. (J.A. 29-30.)

Approximately 17 or 18 Krishnas then conducted their solicitations and distributions during five or six days of the 1977 fair. Joseph Beca deposition at 10 and 23. Of this number, at least five or six were identified as being residents of cities outside Minnesota (i.e., Kansas City, St. Louis, Louisville, and Charlotte, N.C.). *Id.* at 23-24. Respondent Beca, who was the leader of the Minneapolis ISKCON temple, testified that he personally collected approximately $900 during this period, although none of that money was obtained at a booth or similar fixed location. *Id.*

The record indicates that the stated purposes of Sankirtan and the temporary restraining order were not followed by some of the Krishnas at the 1977 fair. The unrebutted affidavits of State Fair General Manager Michael Heffron, police officer Dwayne Bronk, fair patrons Elizabeth Ann Murphy, Michael Gene Krogness and Glen Larson, and fair employee William Paddock reveal several instances of deceptive practices and violations of the restraining order. (J.A. at 44-57.) Generally the evidence showed that Krishnas misrepresented their identities for purposes of their solicitations and sold flags, buttons, fairground maps, flowers and books on a roving basis, in violation of the Temporary Restraining Order. Their solicitations techniques at the 1977 fair included: trying to sell items of a non-religious nature or seek donations from fairgoers as they attempted to get out of their cars upon arriving in fairgrounds parking lots; identifying themselves as agents of the State Fair, schools for needy children, the

division of natural resources, teachers of wayward and handicapped children; grabbing books and other items from fairgoers who refused to give monetary donations after being given these items as gifts; and seeking donations from minors. *Id.*

SUMMARY OF ARGUMENT

The Minnesota Supreme Court's decision is destructive, rather than supportive, of constitutional rights. In striking down the State Fair's booth rule, the Court invalidated a regulation that promotes equal access to the fairgrounds among a great variety of competing organizations. The rule merely requires that any person or group who wishes to sell or distribute materials or solicit money at the 12-day annual fair do so only from a fixed location on the fairgrounds. It has no effect whatsoever on persons who desire to proselytize or engage in discussions with fairgoers anywhere. Furthermore, the booth rule is not directed at the content of any speech or the substance of any religious beliefs.

Because of the limited restriction imposed by the rule, it should be analyzed in terms of whether it is a reasonable time, place and manner regulation that serves substantial governmental interests and whether those interests outweigh the effects of the rule on the Krishnas. The Minnesota Supreme Court correctly concluded that the booth rule did promote substantial governmental interests. Among those interests are the obligation to protect and enhance the constitutional rights of all fair participants and patrons and the duty to deter fraudulent or deceptive solicitations and to promote order and safety throughout the fairgrounds. These public purposes have been acknowledged as compelling not only by the Minnesota Supreme Court but also by this Court on numerous occasions.

It was error, however, to conclude that the interests of the Krishnas are greater than the public purposes of the rule and that the rule could accomplish those purposes in a less restrictive manner. The records in this case and similar cases, as well as the predictable consequences of exempting the Krishnas from the booth rule, show that the governmental interests and equivalent rights of other groups are more substantial than are the interests of the Krishnas.

The primary, if not exclusive, impact of the rule on the Krishnas is economic. That is, by limiting their monetary transactions to a fixed booth, the Krishnas might not obtain as much money as they could by selling and soliciting throughout the fairgrounds. Even under the booth rule they would be free to proselytize and to participate in conversations on a roving basis. The actual dissemination of religious beliefs, therefore, is not affected by the rule. Furthermore, by requiring all exhibitors and concessionaires to register with the fair at identified booths, the rule tends to insure that fairgoers make their purchases or donations with full knowledge of who the booth operators are and the purposes of their organizations. The deceptive practices of the Krishnas in this and other cases make the latter objective perhaps more important than usual.

The Minnesota Supreme Court's finding that the booth rule is not the least restrictive method for achieving the given governmental objectives is contrary to the record and reality. Under the rule the Krishnas and all other groups still have adequate alternative means for communicating and engaging in religious activities. Although a less restrictive version of the booth rule technically might be possible, it would not sustain the important governmental interests now served by the rule.

ARGUMENT

I. SINCE THE BOOTH RULE IS NON-DISCRIMINATORY, NON-PRECLUSIVE AND NON-CONTENT ORIENTED, THE STANDARDS FOR EVALUATING THE KRISHNAS' FREE SPEECH AND FREE EXERCISE OF RELIGION CLAIMS ARE IDENTICAL.

A. Description Of The Booth Rule.

At the outset it is important to recognize the kinds of restrictions which are and are not embodied in the Minnesota State Fair's booth rule. Ultimately, the rule permits proselytizing almost anywhere on the fairgrounds and provides equal opportunities for the dissemination of literature and the solicitation of money from fixed locations, usually in the form of rented booths.

It is undisputed that the rule applies equally to all persons or groups who wish to sell or exhibit products, solicit contributions or distribute materials at the fair. No preference is given to any group; applicants are rented booth space on a first-come, first-served basis. The so-called license fee of Rule 6.05 in reality is a space rental fee based upon the size and location of the booth space rented.

It is equally important to consider what Rule 6.05 does *not* entail. Such considerations weigh heavily in any factual analysis of the numerous cases involving First Amendment freedoms. First, the rule does *not* prohibit proselytizing per se throughout the fairgrounds. Second, the booth rule does *not* permit any State Fair official discretion in granting or denying applications from exhibitors and concessionaires. (J.A. at 35, 63.) Compare *Cantwell v. Connecticut*, 310 U.S. 296

(1940); *Hague v. C.I.O.*, 307 U.S. 496 (1939); *Wolin v. Port Authority of New York*, 392 F.2d 83, 90, 93 (2d Cir. 1968), *cert. denied*, 393 U.S. 940; and *Farmer v. Moses*, 232 F.Supp. 154, 162 (S.D. N.Y. 1964).

Third, the booth rule is *not* content-oriented. On its face and as applied, the rule does not distinguish among applicants on the basis of the content of their materials, and it does not restrict the content of any literature disseminated from a booth. (J.A. at 36.) Compare *Lewis v. New Orleans*, 415 U.S. 130 (1974) and *Cohen v. California*, 403 U.S. 15 (1971). Fourth, this case does *not* involve any abridgement of rights of religious beliefs or association. Compare *Elrod v. Burns*, 427 U.S. 347 (1976).

Finally, the booth rule does *not* represent a total prohibition of speech and religious activity. Any person who pays the fee to enter the fair may discuss religious or other beliefs without being affected by Rule 6.05. Compare *Hague v. C.I.O.*, *supra*, and *Schneider v. State*, 308 U.S. 147 (1939).

B. Both The Free Speech And Free Exercise Claims Together Are Subject To A Test Which Considers The Overall Reasonableness Of The Rule And Balances The Interests Of The Krishnas Against Those Of The State Fair.

Throughout this case the Krishnas have asserted that the booth rule violates their rights of free speech and free exercise of religion, although their legal arguments for both claims often have been undifferentiated. Similarly, the Minnesota Supreme Court's majority opinion includes both First Amendment rights within one analytical framework, even though its ultimate holding tends to be directed more to the right of free exercise of religion. Because of the type of regulation

at issue in this case, such an approach is proper. As shown more clearly hereinafter, the standards for reviewing free speech and free exercise claims are identical under the factual circumstances in the instant record.

A governmental regulation typically can abridge free speech in one of two ways: (1) by restricting the content or ideas represented by speech or publication, or (2) by regulating the flow of information or ideologies as an effect of attempting to achieve other purposes. An example of a content-oriented regulation is one which specifically prohibits particular statements as the primary objective. Compare, *Consolidated Edison Co. of New York v. Public Service Commission of New York*, —— U.S. ——, 100 S.Ct. 2326 (1980); *Lehman v. Shaker Heights*, 418 U.S. 304 (1974).

The second kind of regulation, non-content oriented, is typified by a governmental restriction aimed at achieving a police power objective such as safety, health, peace or order, with an attendant impingement of general speech. Examples would be ordinances which prohibit the use of loudspeakers in residential areas or picketing near schools. *See, Grayned v. Rockford*, 408 U.S. 104 (1972); *Kovacs v. Cooper*, 336 U.S. 77 (1949).

As to the content-oriented type of speech regulation, there is a presumption that it is violative of the First Amendment and, thus, must meet the highest standard of constitutional scrutiny. But, a governmental restriction of the non-content oriented variety is subject to a less stringent, balancing-of-interests test. *Konigsberg v. State Bar of California*, 366 U.S. 36, 50-51 (1961) (rules which only limit the performance of speech activities can be justified by countervailing governmental interests); *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941) (rules not aimed at specific information are acceptable so long as they do not "unduly constrict" the flow of ideas).

Likewise, there is a distinctly stricter scrutiny of regulations controlling religious beliefs than those limiting activities or conduct related to religious beliefs. *Sherbert v. Verner*, 374 U.S. 398, 402-03 (1963); *Murdock v. Pennsylvania*, 319 U.S. 105, 110 (1943); *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940); *Reynolds v. United States*, 98 U.S. 145 (1878). With respect to a rule which is not prohibitive of any religious belief or ideology this Court stated in *Cantwell v. Connecticut, supra:*

> It is . . . clear that a state may by *general and non-discriminatory* legislation regulate the *times, the places and the manner* of [religious] soliciting upon its streets . . . and may in other respects safeguard the *peace, good order and comfort* of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment.
>
> . . . .
>
> The general regulation, in the public interest, of solicitation, which does not involve any *religious test* and does not *unreasonably* obstruct or delay the collection of funds, is not open to any constitutional objection, *even though the collection be for a religious purpose.*

Id. at 304, 305 (emphasis added).

This Court in *Murdock, supra,* and *Cantwell* applied identical balancing tests to the free speech and free exercise of religion claims in those cases.

In the instant case the State Fair's booth rule is obviously of the non-content oriented variety. It is not in any manner directed at particular beliefs or information; rather, it has an ancillary impact on speech and religious-related conduct in pursuit of other governmental interests. The rule merely

restricts the location of speech and religious activity when they are accompanied by monetary solicitations or distributions of materials. Consequently, it is to be reviewed by balancing the interests of ISKCON with those of the State Fair. See Argument III, *infra*. *See Cox v. Louisiana*, 379 U.S. 536, 555 (1965).

The balancing test required in non-content speech and free exercise cases is a weighing of the harm suffered by those whose speech or religious conduct is restricted against the governmental purposes served by the regulation. These purposes must be "substantial," "significant," "important" or "compelling." *See Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771 (1976); *Grayned v. Rockford, supra*, 408 U.S. at 115; *United States v. O'Brien*, 391 U.S. 367, 376-77 (1968); *Lehman v. Shaker Heights, supra*, 418 U.S. at 303.

In addition, the balancing of interests often entails a consideration of four other factors. First, the analysis will be affected by the degree to which the rule falls unevenly on particular groups or persons. *Grayned v. Rockford, supra* at 109-110. Since the booth rule now in question does not discriminate against any person or group, there is no basis for that concern in this case except to the extent the Minnesota Supreme Court's decision creates a potentially discriminatory effect on other groups. The second inquiry is whether or not the regulation tends to close down traditional public forums or totally excludes groups from their use for speech or religious purposes. *Id.* Again, the State Fair's booth rule passes this test. The rule does not exclude Krishnas or anyone from entering the fairgrounds and speaking to others of their beliefs, and indeed it tends to keep the fairgrounds more equally accessible to all groups with ideas to communicate. The third factor to consider is that if the area in question is in some fashion a public

forum, the booth rule must be reasonable as to the "time, place and manner" of its restrictions. *Grayned v. Rockford, supra* at 115; *Cox v. Louisiana, supra* at 558; *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941). Embodied within this test of reasonableness is generally a consideration of the "nature" or "pattern of normal activities" of the forum. *Grayned, supra* at 116; *Lehman v. Shaker Heights*, 418 U.S. at 302-03.

The fourth consideration in non-content speech and free exercise cases is less well defined. On the one hand, there have been decisions by this Court which indicate that a regulation must be the "least restrictive" means of serving the governmental interest. *See Sherbert v. Verner*, 374 U.S. 398 (1963) (free exercise of religion case). Yet, several other cases suggest that if the booth rule satisfies the other traditional tests cited above it will pass constitutional muster so long as it allows for appropriate alternative means of engaging in communication or religious activity. *See, e.g., Grayned v. Rockford, supra*; *Cox v. Louisiana, supra*; and *Cox v. New Hampshire, supra*. Accord, *Bell v. Wolfish*, 441 U.S. 520 (1979); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, supra* at 771; *Kleindienst v. Mandel*, 408 U.S. 753, 765 (1972). In these cases an alternative means of gaining access to a forum was considered as a part of the "time, place and manner" analysis. Presumably, therefore, the fact that the booth rule in this case does allow other choices to the Krishnas for disseminating their views and collecting money makes the rule more reasonable.

Some pertinent conclusions can be drawn from the foregoing. First, and perhaps foremost, in a case such as this where the rule is not directed at the content of any speech or the beliefs of any religion, the Krishnas' rights of free speech and religion are co-extensive. By attacking the booth rule under

two First Amendment clauses, they are not entitled to any greater protections than they would have under either clause separately. Furthermore, the Minnesota Supreme Court's decision should be reversed if it can be shown that: 1) the booth rule serves a significant governmental interest; 2) it is reasonable as to the time, place and manner of its restrictions; 3) the interests served by the rule outweigh the impingement of the Krishnas' First Amendment rights; and 4) it either constitutes the least restrictive means for achieving the governmental objectives or allows for adequate alternative methods for the Krishnas to engage in their speech and religious activities.

II. THE BOOTH REQUIREMENT SERVES SIGNIFICANT GOVERNMENTAL INTERESTS IN A REASONABLE MANNER BY ENHANCING THE RIGHTS OF FAIR PATRONS AND PARTICIPANTS AND DETERRING DECEPTIVE AND FRAUDULENT CONDUCT AND PROMOTING ORDER AND SAFETY.

Even the majority Opinion of the Minnesota Supreme Court acknowledged the State Fair's compelling interest in having a booth rule to protect the safety, health, welfare and convenience of fair participants and patrons:

> We agree that these facts suggest a situation in which the state's interest in maintaining order is *substantial.* We have no doubt that Rule 6.05's requirement that all vendors, exhibitors and concessionaires perform their functions at fixed locations *furthers that interest significantly.*

299 N.W.2d 79, 83 (Minn. 1980) (emphasis added) (J.A. 64.)

Consequently, the Minnesota Supreme Court itself concluded that there is indeed a substantial governmental interest which is promoted by regulating sales, solicitations and distribution of materials on a crowded, confined fairgrounds. It is also agreed that the booth rule in question does further those interests. The only apparent basis for the Court's decision is its conclusion that the public purposes served by the rule do not outweigh the alleged harm to ISKCON and that the booth rule is not the least restrictive means of achieving the compelling governmental purposes. *Id.* at 84. Before addressing the latter conclusion, however, it may be helpful to review the public interests promoted by the booth rule.

A. The Booth Rule Protects The Rights Of Competing Exhibitors And Concessionaires And Fairgoers.

In reaffirming that First Amendment rights are not absolute and that reasonable accommodations must be made for competing groups, this Court has stated:

> Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend.

Cox v. New Hampshire, 312 U.S. 569, 574 (1941). Expanding upon the foregoing comments, Mr. Justice Stevens has stated that, "some forms of orderly regulation actually promote free-

dom more than would a state of total anarchy." *Consolidated Edison Co. of New York v. Public Service Commission of New York*, —— U.S. ——, 100 S.Ct. 2326, 2338 (1980) (Stevens, J., concurring).

1. Protection of the Rights of Exhibitors and Concessionaires.

The Minnesota Supreme Court's decision poses a potentially serious impairment of the rights of other participants in the fair. In conjunction with the "first-come, first-served" approach to fairgrounds space rental, the booth rule promotes the equal access and First Amendment rights of all those who sell, exhibit or in any manner participate in the fair.

As a state agency, the State Fair has an obligation to provide equal opportunities to all Minnesotans who desire to sell, distribute or exhibit products at the annual fair. Yet, the fairgrounds is only large enough to accommodate about 1,400 of the 1,700-1,900 applicants for space. Although many of the current concessionaires and exhibitors are of a commercial variety,[5] they too have First Amendment speech and association rights and equal protection rights under the Fourteenth Amendment. *See, Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 750, 770 (1976); *Lehman v. City of Shaker Heights*, 418 U.S. 298, 304 (1974).

Even if purely commercial speech rights are deemed less substantial than those now asserted by ISKCON, certainly the 40 or more other religious, press and political groups leasing booth space have First Amendment rights equivalent to those of ISKCON. In *Murdock v. Pennsylvania*, 319 U.S. 105

[5] These groups also represent agricultural interests.

(1943), for example, this Court noted that the distribution of religious literature and the collection of donations were "age-old" forms of missionary evangelism. *See also Village of Schaumburg v. Citizens For A Better Environment,* 444 U.S. 620 (1980), (all charitable solicitations are protected by the First Amendment). Therefore, the Jehovah's Witnesses, Baptists, Lutherans, Catholics, Mormons and members of the Unification Church and the Church of Scientology and numerous other religious groups also are entitled to the same opportunities to exercise their evangelism and to collect religious donations as the Krishnas. *See Hynes v. Metropolitan Government of Nashville,* 478 F. Supp. 9, 11 (M.D. Tenn. 1979); *ISKCON v. Evans,* 440 F. Supp. 414 (S.D. Ohio 1977).

The representatives of the news media which participate at the fair also have "preferred" First Amendment freedoms. *See, New York Times Co. v. United States,* 403 U.S. 713 (1971); *New York Times v. Sullivan,* 376 U.S. 254 (1964) and *Schneider v. New Jersey,* 308 U.S. 147 (1939). Under the booth rule these persons now sell or distribute their newspapers and conduct their broadcasts from fixed locations.

Finally, there are numerous organized political parties and individual political candidates for governmental offices who now rent booths at the fair. Their sole objective is to convey, through written and spoken words, their political ideas and to persuade fairgoers to support them—by voting and contributing financially. The number of such candidates obviously multiplies during election-year fairs. These persons too have substantial free speech and free association rights under the First Amendment. *See, e.g., Elrod v. Burns,* 427 U.S. 347, 356 (1976); *Buckley v. Valeo,* 424 U.S. 1, 11 (1976).

However, the position of the Krishnas and the effect of the Minnesota Supreme Court's decision is to discriminate against

similar groups with equal First Amendment rights. The majority opinion below turned on its inference that Sankirtan required peripatetic solicitation and ignored the fact that other religions, political parties, etc. would be affected. It appears, in fact, that implicit in that opinion is an erroneous conclusion that the Krishnas' exercise of religious activity is entitled to greater constitutional protection than the free speech rights of competing organizations. Under that decision all groups other than the Krishnas would be required to stay in their present booths or, if not presently at the fair, remain on the space rental waiting list.

Thus, under the Minnesota Supreme Court's decision, the Krishnas have been granted special treatment at the expense of others with comparable or identical rights. The Minnesota Supreme Court's holding erroneously elevates the rights of the Krishnas above other organizations with equivalent rights and offends a core principle of the First Amendment that there is an equality of the status of ideas. *Public Department of the City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). The Krishnas' request for favoritism and special status should be denied.

2. Protection of the Rights of Fairgoers.

In assessing how well the booth rule promotes the governmental interests of public order and convenience, the rights of fair patrons also should be considered. Freedom of speech presupposes both a willing speaker and a willing listener. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. at 756, *supra; Lehman v. Shaker Heights*, 418 U.S. at 307, *supra*; and *Kovacs v. Cooper*, 336 U.S. 77, 86 (1949). Particularly in the context of this case, the annoyance

and harassment of fairgoers by roving solicitors are of more than slight interest.[6]

In some of the more traditional speech settings it has been said that if a listener can easily avoid or ignore unwanted speech, then the rights of a speaker may be superior. *See, e.g., Murdock v. Pennsylvania*, 319 U.S. 105 (1943) (door-to-door solicitations by Jehovah's Witnesses). Consequently, peaceful door-to-door solicitations have been permitted, since the "listeners" may easily refuse to open their doors, may close their doors to unwanted speech, or may post a sign on their doors announcing their unwillingness to have such contacts. *Id.* Likewise, persons who are passing through open airports, subway stations and other transportation terminals on their way to other destinations can often easily ignore unwanted solicitations during their brief stays in such facilities.

A fairgrounds, however, has a much different audience and should be subject to greater restrictions. Cf., *Kovacs v. Cooper*, 336 U.S. at 87, *supra* (even speech near city streets is not beyond reasonable controls). Unlike a "listener" in his home or passing temporarily through an open park or transportation facility, a person who attends a state fair pays an admission fee and enters usually for the express purpose of staying several hours or all day to observe or participate in those activities of special interest to him. If a fairgoer does not wish to hear certain vendors who may try to persuade him to buy a product, participate in a game or ride a carnival ride, he may easily walk away from those vendors' booths or totally avoid walking in certain fairgrounds' areas (e.g., the carnival mid-

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[6] *See also* Prince v. Massachusetts, 321 U.S. 158 (1949) (state has a significant interest in protecting minors); and International Society for Krishna Consciousness v. Barber, No. 77-CV-328 (N.D. N.Y., filed Aug. 25, 1980) (additional examples of harassment and deception of fairgoers by Krishnas).

way) with the knowledge that he will not be contacted by those vendors again. He may then spend his time only on those exhibits or concessions for which he paid his entrance fee.

The Minnesota Supreme Court's decision, however, has a detrimental effect on thousands of fair patrons who may wish to avoid repeated solicitations. Fairgoers could totally leave the fairgrounds, forfeiting their admission fees, in order to avoid numerous roving solicitations. Or, at least, the fairgoers may be forced to leave a fairgrounds section in which they had been interested (indeed, which may have been their primary attraction) in order to avoid roving solicitors in that area. Or, they would be required to reject repeatedly unwanted flags, books, buttons, flowers, maps, etc. from ISKCON and other similar groups. For, with numerous roving solicitors, it is likely that many fair patrons would be approached several times by persons representing different groups or even by the same solicitors. Such choices are unreasonable.[7]

In our society it is to be expected, of course, that persons who go out into public places such as parks, airports and city streets may come in contact with speakers who espouse views which annoy or offend them. The ability to walk away from or avoid such contacts is a small price to pay for preserving First Amendment freedoms. But, such ability is not realistically available to one who enters a closed fairgrounds, a ball park or some other entertainment event. It is, therefore, unfair to grant ISKCON and similar organizations rights which have a disproportionately adverse impact on the fairgrounds audience.

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[7] Compare ISKCON v. McAvey, 450 F. Supp. 1265, 1270 (S.D. N.Y. 1978) (court refused to permit a situation in a trade center whereby persons would be forced to leave certain areas merely to avoid unwanted communications).

B. The Police Power Objectives Of Reducing Fraud And Promoting Order And Safety Are Furthered By The Rule.

1. Prevention of Fraud and Deceptive Conduct.

This Court has repeatedly recognized the substantial interest a governmental unit has in protecting its citizens from fraudulent solicitations, deceptive or false speech and undue annoyance. *Village of Schaumburg v. Citizens For A Better Environment*, 444 U.S. 620, 100 S.Ct. 826, 836 (1980); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771 (1976); and *Niemotko v. Maryland*, 340 U.S. 268, 277 (1951). *See also*, Miekelejohn, *Commercial Speech and the First Amendment*, 13 Cal. W. L. Rev. 430, 499-500 (1977).

In *Village of Schaumburg, supra*, this Court reaffirmed the principle that protecting the public from fraud and undue annoyance was an "indeed substantial" governmental interest.[8] *Id.* at 836. The comment in *Schaumburg* was premised on this Court's earlier statement in *Cantwell v. Connecticut*, 310 U.S. 296, 306-07 (1940):

> Even the exercise of religion may be at some slight inconvenience in order that the state may protect its citizens from injury. Without doubt a *state may protect its citizens from fraudulent solicitation* by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his

[8] In the Schaumburg case this Court struck down a local ordinance which prohibited charitable organizations from soliciting funds unless at least 75% of the receipts were used directly for charitable purposes. The 75% restriction was deemed to have had little connection to the prevention of fraud or deceptive conduct. Also, the record in that case did not contain any evidence that the appellees had, in fact, engaged in deceptive solicitations.

> identity and his authority to act for the cause which he purports to represent. The state is likewise *free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience.*

(Emphasis added; footnote omitted.)

The need for a booth rule to prevent or reduce fraudulent or deceptive solicitations on the Minnesota fairgrounds is strong. Where thousands of people of all ages and abilities are moving about in a 40- to 45-acre area the opportunities for unscrupulous persons to collect money through deceptive sales and solicitations are many. Those who would engage in such conduct are further attracted by the fact that almost every fair patron enters the fairgrounds with money and an intention to spend it. In many cases these patrons are youths who may be even more susceptible to a deceptive sales pitch by a roving vendor.

The booth rule was drafted to enhance the ability of fairgoers to become informed of the identity and purpose of all salespersons. Under the rule, persons who attend the fair know that they will not be subjected to "hit and run" solicitations and that if they are approached by roving vendors, the fairgoers will know such activity is contrary to State Fair rules.

The State Fair would not have any realistic ability to prevent or minimize fraudulent solicitations without a rule that requires all solicitors to register with the State Fair and to confine their activities to a known fixed location. The booth rule was, therefore, adopted many years ago as a means of combatting and reducing the instances of fraudulent sales and solicitations.[9]

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[9] According to the 1976 edition of the Minnesota State Fair booklet of rules and regulations the booth rule has been in existence since at least 1966, many years before the commencement of this action.

Several examples of why the booth rule is necessary occurred at the 1977 Minnesota Fair. That was when the Krishnas refused to abide by the Minnesota rule, and under a temporary restraining order,[10] conducted roving sales and solicitations on the fairgrounds.

In the instant case the Krishnas who solicited at the 1977 State Fair deceived fairgoers as to their identities, the purpose of their fund-raising and the nature of their transactions. Krishnas solicited money while identifying themselves as agents of the division of natural resources, teachers for wayward and handicapped children, children with drug problems, agricultural schools and even the State Fair itself.[11] In addition, ISKCON members sold articles on a peripatetic basis in violation of the restraining order, often through a direct sales transaction or by presenting a fairgoer with a flower, book or other item as a "gift", only to take it back if a "donation" were not forthcoming. *Id.* Flowers, books, flags and fairgrounds maps were frequently forced on unsuspecting fair patrons, occasionally as they were attempting to get out of their car in the parking lot. *Id.* Finally, there was evidence that deceptive sales and solicitation tactics were used against minors. Affidavit of Heffron at 16 and Murphy, *supra.*

Not only is such activity misleading, fraudulent and annoying, it appears to be typical of the Krishnas' conduct at other fairs. *See, e.g., International Society for Krishna Conscious-*

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[10] The trial court initially restrained the State Fair temporarily from enforcing its booth rule in 1977, with the exception that the rule was enforceable as to "sales." Thus, 17-18 Krishnas proselytized and solicited throughout the fairgrounds for several days during the '77 fair. Deposition of J. Beca at 10 and 23.

[11] Affidavits of Heffron at para. 16 (July 27, 1978) (J.A. 47), Michael Gene Krogness (J.A. 53), William Paddock (J.A. 53), Elizabeth Murphy (J.A. 54), Glen Larson (J.A. 57) and Dwayne Bronk (J.A. 56.) Heffron's affidavit also indicates that 234 unsworn complaints were filed regarding the Krishnas' activities.

ness v. Barber, No. 77-CV-328 at 17-29 (N.D. N.Y., filed Aug. 25, 1980) (numerous "condoned" deceptive practices, including slurring the word "Krishna" to make it sound as "Christian" when soliciting); *International Society for Krishna Consciousness v. State Fair of Texas*, 461 F. Supp. 719, 720 (N.D. Texas 1978) (Krishnas refusing to make change for purchases, soliciting children and retarded persons).

The ISKCON leaders, of course, have stated that they instruct Krishnas to use only straightforward, non-deceptive methods in performing Sankirtan. *See*, e.g., Stipulation of Facts at paras. 11-12 (J.A. 33-34). They are advised not to harass potential donors or purchasers. *Id.* But, in reality, as shown by the record in this and other cases, such advice seems to be seldom given or is frequently ignored by many of the Krishnas. The experience of the Minnesota State Fair officials in 1977 certainly has taught them that they cannot rely on ISKCON's espoused non-fraudulent techniques of conducting Sankirtan.

In the face of evidence that First Amendment-related conduct has been performed fraudulently or illegally, it has been suggested that the proper remedy for such wrongs is through a criminal prosecution or civil lawsuit against each offender. In the context of this case, however, that suggestion is simplistic and impractical. The difficulties of policing fraud, thefts and assaults by solicitors roaming freely among thousands of persons in 40-45 acres would be overwhelming. To the extent a limited amount of fraudulent conduct already occurs at the fair, the booth rule confines it to registered locations allowing more accountability. It is clearly much easier to trace, locate, investigate and prosecute offenders when the incident occurs at an easily identifiable fixed location with a registered

owner or operator than it is when the offender is, at best, a face that disappears in the crowd.[12]

Often by the time a purchaser or donor has learned he or she has been deceived, the roving solicitor has vanished and any effort to locate a police officer or to report the incident fast enough is futile. In addition, the fair patron and/or the solicitor may be out-of-state residents. Indeed, at the 1977 Minnesota Fair several of the Krishnas were residents of Kansas City, St. Louis, Louisville and Charlotte, North Carolina. Beca Deposition at 23-24. The expense and effort of attempting to apprehend and prosecute the offender by means of a judicial proceeding weeks or months later usually are prohibitive. That problem would be compounded if the defendant, the victim and/or witnesses are residents of other states. In fact, if the defendant is a non-Minnesotan charged with misdemeanor fraud, it would be very difficult to convince the state of his residence to extradite him to Minnesota for prosecution.

Consequently, the alternative of using judicial sanctions against individual offenders is not realistic. If the Minnesota Supreme Court's decision is allowed to stand, it would force the State Fair either to give up any serious effort to combat fraudulent solicitations or, if economically possible, to increase greatly the size of its police force.

This court seems to have recognized that mere reliance on criminal prosecutions is not appropriate in such circumstances. In its recent decision in *Village of Schaumburg v. Citizens For A Better Environment, supra,* 444 U.S. at 637-38, fn.

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[12] Under the current booth rule system, when a fraudulent sale occurs at a concession or exhibit the State Fair may, at a minimum, suspend or revoke the space rental privileges of the registered booth owner.

12, this Court referred approvingly to an Illinois law that required charitable fundraisers to register with the Illinois Attorney General and to disclose certain information about their activities.[13] The government's attempt, beyond the use of criminal prosecutions, to protect the public from deceptive solicitations was approved:

> Efforts to promote disclosure of the finances of charitable organizations also may assist in preventing fraud by informing the public of the ways in which their contributions will be employed. Such measures may help make contribution decisions more informed. . . .

Id. (emphasis added and footnote omitted).[14]

It is, therefore, appropriate for the State Fair to do more than just rely on separate criminal sanctions to insure that fairgoers of all ages and abilities are making informed purchases or donations. The State Fair's booth rule is directly related to a substantial governmental interest in reducing deceptive and harassing conduct and is a more feasible response to such activities than mere reliance on separate prosecutions. For this reason alone, validity of the booth rule should be sustained.

2. Promotion of Order and Safety.

The relationship of the booth rule to the governmental objective of promoting order and safety on the fairgrounds should be considered both in terms of the factual record and

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[13] The decision in the Schaumburg case was issued after the Minnesota Supreme Court's decision in this case.

[14] *See also,* United States v. O'Brien, 391 U.S. 367, 379-80 (1968) (acknowledges the "difficulty of detecting and tracing" certain misconduct involving First Amendment-related activities) and International Society For Krishna Consciousness v. Barber, *supra,* at 41.

the logical consequences of the Minnesota Supreme Court's decision. *See Lehman v. Shaker Heights*, 418 U.S. 298, 304 (1974); *Cox v. Louisiana*, 379 U.S. 536, 554-55 (1965).

As noted above, each year there are approximately 1,300,000 people who attend the fair and about another 1,400 concessionaires and exhibitors who work there.[15] Most of these persons and the numerous State Fair staffs and employees are confined to an area equivalent to about 40-45 acres of the enclosed fairgrounds. Stipulation of Facts and Heffron Affidavit at para. 3 (July 27, 1978) (J.A. 45-46). Because of these congested conditions, it is undeniably critical for the State Fair to be able to exercise reasonable controls over the crowds and to provide speedy emergency health, fire and police services. Heffron Affidavit at para. 7 (J.A. 45).

Michael Heffron, Secretary-General Manager of the State Fair, stated that the congested fairgrounds made his responsibility for safety, health and welfare protections "burdensome and critical."[16] Many fairgoers and workers need medical care for injuries,[17] and, according to Mr. Heffron, his own 20 years' experience with the State Fair and his knowledge of difficulties at other state fairs have taught him that roving vendors and solicitors would make his crowd control task much more difficult.[18]

In addition, the experiences with just 17 or 18 Krishnas during only five or six days of the 1977 State Fair corroborate Mr. Heffron's statements. Aside from engaging in deceptions, members of ISKCON would join in pairs to solicit fair patrons or would approach someone getting out of his car in a parking

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[15] The average week-day attendance of fair patrons is 115,000 and the average week-end daily attendance is 160,000. (J.A. 35).
[16] Heffron Affidavit of July 27, 1978, at para. 7 (J.A. 45).
[17] *Id.* at para. 8.
[18] *Id.* at para. 18.

lot.[19] Little imagination is required to conclude that the same or greater numbers of Krishnas or other groups engaging in such conduct throughout a 12-day fair would exacerbate an already difficult problem.

For example, on a fairgrounds with thousands of people even a few roving solicitors would stand out and attract curious crowds disproportionately large to their numbers. Such random gatherings would occur more frequently when it becomes known that the person who is the center of attention is giving away or selling some products. In contrast, mere discussions among people are not unique on the fairgrounds. Fairgoers would be much more inclined to gather around a person who is giving away or selling products outside the confines of a fixed booth than if that same person were merely carrying on a conversation with someone else. The existence of peripatetic ISKCON solicitors practicing Sankirtan throughout the fairgrounds and parking areas would predictably lead to transient "booths," posing further obstructions to ambulances, fire trucks, etc.

In *Cox v. New Hampshire, supra*, this Court upheld a regulation that prohibited public parades or processions without a license. The evidence in that case showed that 68 ministers had violated that statute because they marched without a permit in four or five single-file groups[20] along the sidewalks of Manchester. 312 U.S. at 572. They did not appear to engage in any other activity except for carrying placards and distributing leaflets with religious and political messages. *Id.* The intersection nearest their procession ordinarily had 26,000 persons pass by per hour on Saturday nights. *Id.* Relying upon

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[19] Affidavit of Bronk at para. 3 (J.A. 56).

[20] It appears that only 14 to 17 ministers were in each single file group.

the state's interest to maintain public order, safety and convenience in such circumstances, this Court affirmed the convictions, even though there was no evidence in that record that the lack of a parade permit would lead to crowd control problems or overlapping processions by diverse groups.

The circumstances underlying *Cox v. New Hampshire* are less compelling than those of the instant case. The Minnesota fairgrounds are far more crowded, both with patrons and with participants who are known to be competing for the same space and audience. Furthermore, in *Cox v. New Hampshire*, this Court gave great weight to the logical consequences a contrary decision would have had.

Similarly, giving ISKCON an exemption to the booth rule does not take into account the increase in other groups who would demand the same exemption on First Amendment grounds. As noted above, at the time of the trial court's decision herein there were at least 40 other religious, political and news media organizations renting booth space at the Minnesota fair. Those groups and others like them have speech, press and religious rights equivalent to those of the Krishnas. *See also Village of Schaumburg v. Citizens For A Better Environment*, 444 U.S. 620 (1980); Argument II.A.1, *supra*.

The effect of abrogating the booth rule, therefore, would permit all religious, political and news organizations and their agents to engage in comparable peripatetic activities. The resulting chaos and moving pockets of unmanageable crowds throughout the fairgrounds would be severely detrimental to the State Fair's interest in maximizing public safety and order.

In summary, the booth rule makes several distinct and direct contributions to the State Fair's important interests of preserving order and safety and promoting the rights and

convenience of fair patrons and competing fair participants. Furthermore, such governmental interests are not founded upon "undifferentiated fears"[21] but are strongly supported by the facts in this case and similar cases and the logical consequences that would follow from the Minnesota Supreme Court's decision.

III. WHEN BALANCED AGAINST THE GOVERNMENTAL INTERESTS SERVED BY THE RULE, THE EFFECT ON ISKCON'S INTERESTS ARE MINIMAL.

The Krishnas' practice of Sankirtan has three principle objectives: spreading religious "truth" through sales and distribution of literature and other materials, seeking converts, and soliciting money. *United States v. Silberman*, 464 F. Supp. 866, 870 (M.D. Fla. 1979); Prabhupada, Preaching is the Essence (1977). The Minnesota Supreme Court inferred that Sankirtan must be practiced peripatetically,[22] although the trial court Stipulation of Facts does not express that as an aspect of the Krishnas' religious conduct. Although that inference is arguably improper, even that form of Sankirtan may be reasonably regulated. *See, e.g., Sherbert v. Verner*, 374 U.S. 398, 402-03 (1963); *Cox v. New Hampshire*, 312 U.S. at 574, 578, *supra*; *Reynolds v. United States*, 98 U.S. 145 (1878).

As shown above, the booth rule has no effect whatsoever on the ability of Krishnas to proselytize or discuss their beliefs anywhere on the fairgrounds. There is no prohibition of pure speech or religious beliefs or the contents thereof. The rule

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[21] Compare Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 508 (1969). *See*, International Society for Krishna Consciousness v. Eaves, 601 F.2d 809, 830 (5th Cir. 1979).

[22] *See* J.A. at 64, fn. 7.

has a partial impact only on Sankirtan's first (sales and distributions) and third (solicitation of money) objectives.[28] That is, it does not prohibit the dissemination of religious materials or the collection of money; it merely limits such activity by all fair participants to particular locations.

The obligatory nature of Sankirtan itself, however, is drawn into question by ISKCON's own teachings and past practices. For example, in one of ISKCON's most widely distributed books describing their religion, it is suggested that chanting and dancing also are traditional, inherent aspects of Sankirtan. Prabhupada, Bhagavad-Gita As It Is, 43, 60, 143-44 (2nd ed. 1972). Yet, in this case and others the Krishnas themselves have been willing to forego the dancing and chanting features of Sankirtan even at a fixed location. See Stipulation of Facts at para. 11 (J.A. 33-34) and *ISKCON v. McAvey*, 450 F. Supp. 1265, 1267 (S.D. N.Y. 1978). In essence, therefore, ISKCON asserts that it alone may be the judge of which of the presumably equal aspects of Sankirtan may be restricted. Such a position makes the inherent, obligatory nature of the *roving* solicitations requirement of Sankirtan suspect.

In reality the major impact of the booth rule on the Krishnas, is purely economic. That is, the Krishnas' volume of sales and solicitations might be less if confined to a booth. The leader of the Minneapolis ISKCON temple, respondent Joseph Beca, testified repeatedly that no harm of any type would be suffered by himself or ISKCON if the booth rule were enforced against them. Deposition of Joseph Beca at 56-58. Even following rehabilitating questions from his attorney, Mr. Beca testified that the State Fair rule would probably harm

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[28] The spreading of Krishna "truth" also means persuading nonbelievers to make a monetary donation in order to attain "purity." See International Society for Krishna Consciousness v. Barber, No. 77-CV-328 at 9-10 (N.D. N.Y., filed Aug. 25, 1980).

ISKCON economically by making it less likely that Krishnas could collect as much money from a booth as they could on a roving basis.[24] *Id.* at 73-75.

The economic motivation of the Krishnas' arguments against the booth rule is buttressed by the Stipulation of Facts. It is agreed by the parties that the Krishnas have volunteered not to engage in singing, chanting or dancing on the fairgrounds. (J.A. 33-34.) Since such activities are also said to be inherent aspects of Sankirtan, it is clear that the reason for the Krishnas' opposition to the booth rule is their desire to collect as much money as possible. Therefore, with respect to the harm allegedly suffered by the Krishnas under the booth rule, it is no different than that suffered by any other religious or non-profit soliciting group.

Moreover, an underlying assumption to the claim that the booth rule would harm ISKCON economically is that it would result in fewer people making donations or purchasing books and materials. Even if such a result might occur, it is relevant to consider the reasons. If Sankirtan were limited to a booth, those fairgoers who are genuinely curious about or supportive of ISKCON would probably visit the booth and make the necessary purchases or contributions. The money would be collected almost exclusively from persons who had knowledge of the purposes for which their money would be used. If they did not have such knowledge before visiting the booth, they certainly would have it before leaving by virtue of the required ISKCON identification signs on the booth. In fact, even under

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[24] Mr. Beca also testified that the booth rule would make it more difficult for Krishnas to reach as many people as they could by moving about the fairgrounds. *Id.* The rule, however, does not prevent proselytizing or conversations on any subject. Therefore, it would not restrict any religious group from discussing its beliefs with others or trying to convert them.

current State Fair policy, Krishnas could proselytize among and speak with fairgoers and then direct interested donors or purchasers to their booth.

In contrast, the bulk of the money the Krishnas might otherwise obtain *without* the booth rule would probably come from persons who are deceived or confused as to the identity of the Krishnas and the usages of their money. The experiences of those who were misled during the 1977 Minnesota fair are good examples.

It is possible, of course, that some fairgoers may give a minimal amount of money to roving solicitors simply to "get rid of them" and to avoid any further discussions or harassments. But, that reason also is hardly adequate to justify the Krishnas' exemption from the booth requirement.

Furthermore, the religious nature of some of the Krishnas' sales and solicitations practices is questionable. As shown by the records in this and other cases, they often sell or distribute flowers, buttons, flags, maps and incense. Such items are not the kinds of "religious" materials referred to by this Court in upholding door-to-door solicitations in *Murdock v. Pennsylvania, supra*, 319 U.S. at 110.

Consequently, when balanced against the harm that would occur to the State Fair, its participants and patrons if the booth rule were invalidated, the harm to the Krishnas and similar groups is minimal under the rule. Under such a balancing test, the booth rule is a reasonable time, place and manner regulation that provides alternative channels of communication and is appropriate to a crowded and limited area such as the state fairgrounds. The assumption that complying with the booth rule would reduce the economic gain of the Krishnas, even if true, is not an adequate basis for impinging upon the governmental interests by invalidating the rule.

IV. THE BOOTH RULE REPRESENTS THE MOST REASONABLE AND LEAST RESTRICTIVE TIME, PLACE AND MANNER REGULATION.

Whether a governmental regulation must constitute the least restrictive mode of controlling First Amendment rights or whether it simply must provide for adequate alternative means of communication has not always been clear from the case law. Some cases indicate that a given regulation must be the least restrictive means of serving governmental interests; others do not address that subject as a separate issue. Compare, *Grayned v. Rockford*, 408 U.S. 104 (1972); *Cox v. Louisiana*, 379 U.S. 536 (1966); *Schneider v. State*, 308 U.S. 147 (1939). *See also*, Argument I.B., *supra*. In any event, the State Fair's booth rule truly does represent the least restrictive method of accomplishing the public purposes described above.

The rule does allow unrestricted speech and religious proselytizing throughout the fairgrounds. It does allow equal access to the fairgrounds to everyone. *See Cohen v. California*, 403 U.S. 15, 21 (1971). And, it does permit the sale or distribution of any lawful product from a registered booth.

Any form of the rule which authorized peripatetic solicitations, however, would not be workable realistically and would impinge upon the governmental interests served by the current rule. For example, if the State Fair simply prohibited solicitations of minors or mentally handicapped persons and/or limited the total number of roving solicitors, enforcement of such a rule would be impossible. The same problems with respect to detecting, apprehending and prosecuting fraud and deceptive conduct by itinerant solicitors would also exist as to a rule prohibiting solicitations of certain groups of people.

Similarly, requiring solicitors to wear identification tags or placing a ceiling on the total number of solicitors would be futile, since on a crowded fairgrounds it would be impossible to know whether that restriction was violated. This problem would be compounded if other religious, political and news organizations also engaged in peripatetic conduct. State Fair officials simply would not realistically be able to determine whether each group were exceeding its maximum number of roving solicitors or whether proper identification tags were being worn in conspicuous places or worn at all. The State Fair's staff is just not large enough to do an effective job of detecting and apprehending violators moving freely among thousands of people. Prosecuting violators of such requirements would not be feasible, and even if they were expelled from the fairgrounds, they could easily re-enter at a different gate.

Furthermore, State Fair officials have numerous other demands requiring their attention. The responsibility for organizing and managing a 12-day fair as large as Minnesota's is a complex and large task. The staff must give round-the-clock attention to a variety of concerns including livestock competitions and shelter, carnival operations and ride safety, parking and transportation needs, health inspections, entertainment performances, trash disposal, ticket sales, effects of bad weather, etc. The amount of additional time and effort required to make special separate arrangements to register and monitor groups who are exempted from the booth rule would be significant and probably fruitless.

Moreover, a booth rule exempting the Krishnas alone would mean that ISKCON would gain a favored status over other groups with equally well established evangelical practices and

groups with equivalent rights to free speech and association. If, on the other hand, all of such groups could engage in some degree of peripatetic activity, it would lead to substantial police and safety problems. In either case, the result would be detrimental to the order, safety, health and convenience of all who use the fairgrounds. Reasonable alternative means of communications are readily available.

Indeed, the Minnesota Supreme Court's decision places the State Fair in an untenable position. It suggests that, because of Sankirtan, only the Krishnas may engage in roving solicitations. That holding, however, would violate the speech, religious and equal protection rights under the First and Fourteenth Amendments of other comparable organizations and is contrary to the holding in *Village of Schaumburg v. Citizens For a Better Environment, supra.* The State Fair would be forced to allow any other religious group also to conduct roving solicitations without questioning the ideological basis of such activity or to deny other groups the same rights given to the Krishnas until those groups "prove" the religious bases of peripatetic solicitations. Neither the State Fair *nor* the Krishnas are qualified to engage in proving or disproving the religious principles of other organizations.

It follows that the booth rule is a common sense approach to the problem of balancing the interests of competing exhibitors and concessionaires against the overall interest of all persons who attend and work at the annual fair. The Minnesota Supreme Court, therefore, erred in concluding that the rule is not the least restrictive form of regulation which adequately could protect the governmental interests at stake.

CONCLUSION

It is appropriate in this case to recall the comments of Mr. Justice Frankfurter in another First Amendment case, *Niemotko v. Maryland*, 340 U.S. 268, 275-76 (1951).

> It is important to bear in mind that this Court can only hope to set limits and point the way. It falls to the lot of legislative bodies and *administrative officials to find practical solutions* within the framework of our decisions.

(Emphasis added).

The above advice, in essense, was followed by the Minnesota State Fair in promulgating its booth rule. The State Fair officials are faced with the difficult task of conducting a large annual fair in a manner that maximizes the purposes of the Fair and enables a reasonable number of participants to have equal opportunities to present their views and products to more than 100,000 people daily crowded into an enclosed permanent area. There is no hint in this case that the booth rule was the result of unlawful motivation or a disguised attempt to single out certain groups for special treatment. To the contrary, there is every indication that the rule simply was devised as a "practical solution" to difficult problems. In every respect the rule is a reasonable time, place and manner regulation.

The governmental purposes supported by the rule are amply set forth in this brief and are expressly acknowledged as significant by the Minnesota Supreme Court. In contrast, the primary, if not exclusive, harm to ISKCON might be a possible reduction in the amount of money collected from fairgoers. Such an impingement on First Amendment freedoms is minor in contrast to the disorder, fraud, inconvenience and safety

problems that would surely occur without the booth rule. This conclusion is made even more compelling by the probability that most of the presumed loss of income would be attributable to those donors or purchasers who would be persuaded to give money under false pretenses or under a desire to terminate annoyance and harassment. That kind of loss plainly does not override the compelling governmental interests served by the rule.

Therefore, the decision of the Minnesota Supreme Court should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

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MICHAEL HEFFRON, *et al.*,
Petitioners,

v.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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Questions Presented

1. Do the First and Fourteenth Amendments allow a state to ban nondisruptive distribution of religious literature and orderly solicitation of religious contributions in the open, public areas of a state fairground?

2. Is such expulsion of speech, press, and religious exercise from a public forum rendered constitutional by the state's permission to engage in exclusively oral religious discussion in the fair's open areas (on pain of possible arrest if such discussion crosses the line between dialogue and solicitation), and to rent a booth at which fairgoers already interested enough to approach may be handed literature and asked to make donations?

3. Can the confinement of such distribution and solicitation to fixed booths be justified by invoking the one purpose that closely fits the rule requiring such confinement: insulating fairgoers from messages they have not affirmatively sought out?

4. Do the supposed secondary purposes of such a rule—preventing disorder and policing fraud—suffice to support the rule's invocation to bar First Amendment activities that are neither fraudulent nor disorderly in themselves, where less restrictive alternatives are available to alleviate such problems?

5. Does the state's duty to govern evenhandedly preclude enforcing the booth rule against commercial but not religious or political enterprises?

6. Would sustaining the invalidation of the booth rule as to non-commercial distribution and solicitation leave the state helpless to cope with confusion and congestion at its annual fair?

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No. 80-795

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MICHAEL HEFFRON, *et al.*,

Petitioners,

v.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF OF RESPONDENTS

Statement of the Case

The Minnesota State Fair annually attracts 1,320,000 visitors, an average of more than 115,000 each day.[1] With their minds open to new experiences, and with time on their hands, these fairgoers are an unusually receptive audience.[2]

At issue in this case is Rule 6.05 of the Rules and Regulations of the Minnesota State Fair ("the booth rule"),

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[1] First Heffron Affidavit, para. 10, at A. 26-27. All references to the Joint Appendix herein are cited as "A. —."

[2] First Beca Affidavit, para. 7, at A. 11.

which classifies as a misdemeanor the "[s]ale or distribution of any . . . printed or written material except under license issued [by] the [Minnesota Agricultural] Society and/or from a duly licensed location . . . ."[3] State authorities have construed the rule[4] to forbid not only the sale or distribution of literature, but also the exhibition of such literature[5] and the solicitation of donations[6] throughout the 125-acre fairgrounds of the annual Minnesota State Fair. This case challenges the validity of the booth rule as construed to relegate to fixed, rented booths the distribution and voluntary receipt of religious literature, and the peaceful solicitation and voluntary donation of religious contributions. The question is whether Minnesota may employ this sweeping ban to avoid the possible abuses of dis-

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[3] Stip. of Facts, para. 13, at A. 34.

[4] Stip. of Facts, para. 16, at A. 34.

[5] *See* Stip. of Facts, paras. 16-18, at A. 34-35.

[6] *See* Opinion Below at A. 62 n.4; Brief of Petitioners ("Br. Pet.") at 3.

[7] That such abuses may have occurred or may someday occur, *see* Opinion Below at A. 72-73 (Todd, J., dissenting in part, joined by Sheran, C.J., and Scott, J.), is a point strenuously urged by petitioners. Br. Pet. at 7-9, 22 n.6, 26-27, 30-31. But this case involves a rule which indiscriminately bans both abusive and innocent distribution and solicitation. *See* Argument § I, pp. 8-9 & n. 3 *infra*. It should be stressed that respondent International Society for Krishna Consciousness, Inc. ("Krishna Consciousness"), does not seek to engage in many of the activities that the state complains will cause special problems; no dancing, chanting, or distribution of "greeting gifts" is intended. Stip. of Facts, para. 11, at A. 33-34. Furthermore, the evidence that various abuses have actually taken place is extremely sparse. No arrests or prosecutions have occurred in connection with any of the alleged abuses attributed by petitioners to Krishna Consciousness members. Only five of the 234 complaints received by the Fair in 1977 were sworn or corroborated in any other way by the record. And the complaints that have been received by the Fair appear to have been actively solicited by Fair officials who handbilled the fairgrounds

tribution or solicitation, instead of guarding against such abuses, by proceeding through civil or criminal prosecution, or by imposing other, less drastic restrictions on such activities.[8]

The state trial court, acting upon a record of stipulated facts[9] and several affidavits, sustained the booth rule in 1978, in a summary judgment for petitioners, who were defendants in a suit filed by respondents in 1977 under 42 U.S.C. §1983.[10]

In the trial court, plaintiffs sought, on their own behalf and on behalf of all members of Krishna Consciousness, permission to solicit religious contributions and distribute and sell religious literature. They did not seek to solicit

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disclaiming any intention to "sanction" religious solicitation (although such officials were under court order to permit it), and "encourag[ing]" complaints to be brought to their attention. Ewert Affidavit Exhibit A, at A. 44. Even when complaints were thus encouraged, the record shows no complaints of congestion or any problems of crowd control—the evils alleged by the state to be Rule 6.05's overriding concern. Br. Pet. 22-23, 29-32.

Finally, the trial court's 1977 temporary restraining order was so ambiguous as to make confusion over compliance all but inevitable. The order restrained the *state* from interfering with plaintiffs' "distributing religious literature or soliciting donations for religious purposes," but enjoined *plaintiffs* from "selling or inducing others to purchase religious literature . . . except at a space rented for that purpose." Temporary Restraining Order at A. 29-30. An unsubtle or unfriendly observer could easily misinterpret a permissible "distribut[ion]," followed by a "donation," with a forbidden "purchase." It is little wonder that one Krishna Consciousness member who simply showed the court's temporary restraining order to a police officer at the Fair was thereupon held in custody for 15 minutes before the police decided that it was proper to release him. Second Beca Affidavit, para. 3, at A. 39.

[8] *See, e.g.*, Opinion Below at A. 66-67.

[9] Stip. of Facts at A. 30-36.

[10] Complaint for Declaratory and Injunctive Relief, para. 1, at A. 3.

contributions for their "greeting gifts" such as flowers or small American flags, nor did they seek to dance, sing, or chant.[11] But the trial court did not tailor its injunction to reach only the abusive practices feared by the state.[12] Neither did the trial court make any finding, nor does the record show, that any proposed alternative less restrictive than the booth rule had been employed by the Fair in 1977, when the Fair's imposition of the rule was temporarily restrained,[13] or at any other time.

In the decision below, the Minnesota Supreme Court reversed the trial court's 1978 judgment and held that the booth rule impermissibly abridges respondents' First and Fourteenth Amendment rights by preventing them from exercising these rights in public places. Minnesota's highest court has thus determined that the booth rule's abridgment of First Amendment rights serves no overriding purpose of the state which cannot be adequately achieved by less restrictive alternatives.[14] Nevertheless, the State Fair and the Attorney General of Minnesota ask this Court to reinstate the trial court's 1978 judgment, to reject

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[11] Stip. of Facts, para. 11, at A. 33-34.

[12] Opinion Below at A. 62 n. 4.

[13] Temporary Restraining Order at A. 29.

[14] Even the partial dissenting opinion below agreed that Rule 6.05 as construed is an unconstitutional regulation of the distribution of literature and of the solicitation of funds. A. 70. But that opinion argued that the actual *collection* of funds at other than fixed points at the Fair potentially created "confusion" because collection involves "exchanging money . . . and . . . making change." A. 71. The opinion concluded that it would not infringe on respondents' conceded right to solicit funds, A. 74, to require all donors to walk to a rented booth and tender their donations there. "[T]he regulation is merely restrictive rather than prohibitive." *Id.* The majority dismissed this alternative without comment, and petitioners have not pressed it in this Court. *See* Argument § IV (c)(2) *infra*.

certain of the Minnesota Supreme Court's "inference[s] [from the record as] arguably improper," [15] and to determine that, on balance, the booth rule's supposed benefits justify any adverse effects upon First Amendment freedoms.[16]

It is undisputed that the Society for Krishna Consciousness is an international missionary religious society whose mission is to preach the tenets of Krishna Consciousness, a monotheistic branch of Hinduism whose origins can be traced back almost five thousand years.[17] Many of this religion's members go out into public places to solicit donations and distribute the Society's theological publications. They receive no salary for their efforts and lead austere lives in keeping with the religious precepts of *sankirtan*, a ritual with ancient roots which requires adherents to reach out and preach to, and to solicit aid from, potentially receptive members of the public.[18] "Donations

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[15] Br. Pet. at 33.

[16] Br. Pet. at 10, 33-36.

[17] *See* Stip. of Facts, paras. 1-2, at A. 31-32.

[18] *See* Stip. of Facts, para. 5, at A. 32. The Krishna Consciousness movement counts among its primary texts the classic poetic and theological Vedic scriptures *Caitanya Caritamrta*, *Bhagavadgita*, and *Srimad-Bhagavatam*. First Beca Affidavit, paras. 13-14, at A. 13. Dr. J. Stillson Judah, Professor of the History of Religion at the Graduate Theological Union in Berkeley, California, has written that the Krishna adept is taught " 'to be kind to everyone, not to be quarrelsome, to be charitable, clean, benevolent, self-controlled, completely devoted to Krishna and free from material desires.' " *Id.*, para. 29, at A. 19, *quoting* J. Judah, *Hare Krishna and the Counterculture* 122-23 (1974). Members of Krishna Consciousness are absolutely prohibited from intoxication, drugs, and gambling; non-marital and non-procreational sex are also forbidden. *Id.*, para. 26, at A 17. Of " 'all the sacrifices mentioned in the Vedic literatures, the performance of sankirtana-yajna is most exalted.' " *Id.*, para. 23, at A. 16, *quoting Srimad-Bhagavatam*, Canto 5, Ch. 19, at 260. "[O]nly the most dedicated, compassionate and self-sacrificing devotees make [*sankirtan*] their

and book sales are the very lifeblood and principal means of support of this movement." [19]

Although respondents requested protection for the First Amendment activities in which they claimed a right to engage as members of a religious organization,[20] they made clear in oral argument below that they sought no privilege unavailable to other religious and political groups,[21] and nothing in the decision below conferred any such privilege.[22] Under the ruling below, purely commercial solicitations and enterprises may be restricted to booths or other areas selected by the Fair[23]; but those who would solicit charitable contributions for First Amendment purposes, although exempt from the booth rule, would remain subject to the full range of less restrictive alternatives that the state is free to enforce.[24]

Summary of Argument

The state seeks to banish from the open, public areas of a state fair, and to confine to fixed, rented booths, exercises

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personal full-time duty." *Id.*, para. 35, at A. 21. The distribution of Vedic texts and ideas is "the only way" Krishna Consciousness members feel that they "can save the world," *id.*, para. 41, at A. 24, and it is through the "life-blood" of "donations and scripture sales" alone, in their experience, that the distribution of such texts and ideas can be maintained. *Id.*

[19] Complaint for Declaratory and Injunctive Relief, para. 9, at A. 5.

[20] Complaint for Declaratory and Injunctive Relief at A. 3.

[21] *See* Opinion Below at A. 72 (Todd, J., dissenting in part).

[22] *See id.* Petitioners suggest the contrary, Br. Pet. at 21, but seem ultimately to recognize that "abrogating the booth rule . . . permit[s] all religious, political and news organizations . . . to engage in comparable peripatetic activities." *Id.* at 32.

[23] *See* Opinion Below at A. 64 n. 7.

[24] *See, e.g.*, Opinion Below at A. 66-67.

of speech, press, and religion lying at the very core of the First Amendment. One purpose, and one purpose only, closely fits this regime: *insulating potentially receptive listeners from messages they have not affirmatively sought out.* But that purpose discriminates against unfamiliar, unpopular, and ill-funded messages and groups, infringing the First Amendment rights of listeners and speakers alike. To be sure, other purposes, not forbidden in themselves—*e.g.,* preventing deception, harassment, and congestion—are arguably advanced by the rule the state seeks to enforce. But these purposes, the state's highest court properly found, could easily be served by alternatives far less restrictive than Rule 6.05. There is no reason for this Court to disturb that determination.

ARGUMENT

I.

The Booth Rule Totally Bans From the Open, Non-Rented Areas of a State Fairground—a Public Forum—Communications at the Core of the First Amendment.

Respondents assert the right, under the freedoms of speech, press, religious exercise, association, and assembly protected by the First and Fourteenth Amendments, to engage in the exhibition, distribution, and sale of religious books, pamphlets, and other written materials, and the solicitation of contributions to the religious body of their faith, in areas of a state fair that are generally open to the public. At issue in this case is the constitutional validity of a state rule confining all sales and distribution of "merchandise" to fixed, rented booths—a rule which, as construed by the responsible state authorities, completely prohibits *all* distribution and solicitation throughout the open,

public, non-rented areas of the Minnesota State Fair.[1] Respondents challenge the facial validity of this rule not simply insofar as it violates their own rights to engage in nondisruptive religious distribution and solicitation,[2] but also insofar as it violates the First and Fourteenth Amendment rights of all religious, political, or charitable groups that might seek to engage in leafleting and solicitation in the open, public, non-rented areas of the State Fair.[3]

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[1] *See* Stip. of Facts, para. 16, at A.34-35; Opinion Below at A.60-61, 62 n.4.

[2] *See* Stip. of Facts, para. 11, at A.33-34.

[3] Not at issue in this case is the validity of the booth rule as applied to commercial, profit-making ventures, or to solicitations of contributions in connection with items other than literature distributed to fairgoers as gifts, *but see* Br. Pet. 23, or to distribution or solicitation activities conducted in disruptive ways, *see* Stip. of Facts, para. 11, at A.33. Respondents obviously cannot be excluded from a public forum because of what others associated with them may have done. *See Healy* v. *James*, 408 U.S. 169, 181-82, 186, 190 (1972). And whether some of respondents' *own* activities might have fallen, or might in the future fall, within an unprotected category is immaterial to respondents' claim here that the booth rule itself—as construed to ban from the public areas of the Fair nonprofit, non-offensive religious, political, or charitable distribution and solicitation conducted nondisruptively, noncoercively, and non-abusively—is facially invalid under the First and Fourteenth Amendments. For respondents may challenge the booth rule as so construed even if it is assumed, *arguendo*, that their "own activities are unprotected," because the rule "substantially abridges the First Amendment rights" of the significant categories of closely related activities described above. *See Village of Schaumburg* v. *Citizens for a Better Environment*, 444 U.S. 620, 634 (1980); *Broadrick* v. *Oklahoma*, 413 U.S. 601, 612-13 (1973). The infringement here is indeed substantial. Rule 6.05 not merely chills but freezes these activities out of a public forum. Furthermore, no exceptions to the overbreadth doctrine apply in this case. The materials whose distribution is sought to be protected lie not at the marginally protected periphery of the First Amendment, *see FCC* v. *Pacifica Foundation*, 438 U.S. 726, 743 (1978); *Young* v. *American Mini Theatres, Inc.*, 427 U.S. 50, 61 (1976), but at the fully-protected core. *See, e.g., Village of Schaumburg*, 444 U.S. at 632; *Cantwell* v. *Connecticut*, 310 U.S. 296, 306-07 (1940); *Lovell* v. *City of Griffin*, 303 U.S. 444, 452 (1938). Nor is the

In banishing such core First Amendment activities from the public areas of the Fair, the booth rule does more than merely channel the time, place, or manner in which such activities may take place. For the rule does *not* simply defer, relocate, or modulate protected expression, as a genuine housekeeping regulation would.[4] The only activities *permitted* by the booth rule—oral proselytism in the Fair's open areas, with distribution of literature and solicitation of contributions confined to fixed booths rented months in advance—are in no sense substitutes for the activities *prohibited*. For the two sets of activities differ fundamentally in terms of the speakers and listeners whose communicative needs they serve—not merely with respect to the quantity of communication the different activities can accommodate, but even with respect to the nature and content of the messages each set of activities can convey. The total ban on leafleting and solicitation in the public parks and thoroughfares of the State Fair thus cannot masquerade as a neutral or non-preclusive "time, place, or manner" regulation. "The privilege of a citizen of the United States to use the streets and parks for communication . . . must not, in the guise of regulation, be abridged or denied." *Hague* v. *CIO*, 307 U.S. 496, 515-16 (1939) (plurality opinion of Roberts, J., joined by Hughes, C. J., and Black, J.).

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solicitation at issue "commercial for overbreadth purposes," *Village of Schaumburg*, 444 U.S. at 632. Any inhibition of the distribution and solicitation at issue here is, therefore, of central First Amendment concern.

[4] *See, e.g., Cox* v. *New Hampshire*, 312 U.S. 569, 576 (1941) (upholding municipal authority to regulate the time, place, or manner of parades held in public streets). Petitioners' efforts to characterize the factual circumstances of the State Fair here as more "compelling" than those of *Cox*, *see* Br. Pet. at 31-32, are wholly misplaced, for *Cox* held only that a parade licensing requirement is not impermissible *per se*, given the obvious fact that "two parades cannot march on the same street simultaneously." *Grayned* v. *City of Rockford*, 408 U.S. 104, 115 (1972), *citing Cox* v. *New Hampshire*, 312 U.S. at 576.

A. *A State Fair Is a Public Forum—Literally a Marketplace of Ideas.*

The modern American state fair—an agricultural and industrial exposition which intermingles the informational and the educational with the commercial and the recreational—has its antecedents in the ancient fairs of Europe, which were, at the outset, primarily religious assemblies of worshippers and pilgrims who came together for religious feasts. Such fairs gradually yielded their dominantly sacred character to a more mercantile spirit as priests and pilgrims alike became merchants and vendors of goods and services. In mediæval Europe, the fair became a major market allowing cosmopolitan gathering and exchange. *See generally* W. Neely, *The Agricultural Fair* 3-23 (1935).

The fair as we know it in this country today is "a congeries of hawkers, vendors of wares and services, and purveyors of ideas, commercial, esthetic, and intellectual." *International Society for Krishna Consciousness, Inc.* v. *State Fair of Texas*, 461 F.Supp. 719, 721 (N.D. Tex. 1978) (temporary restraining order); 480 F.Supp. 67 (N.D. Tex. 1979) (preliminary injunction); No. CA-3-78-1279-G (N.D. Tex. July 30, 1980) (permanent injunction). It has traditionally afforded exposure not only to the products displayed, but also to an interchange of ideas, information, interests, and social contacts. By gathering together otherwise unassociated people and ideas, the fair has from time immemorial served both to broaden the horizons and to expand the awareness of the attending public.[4a] The Min-

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[4a] As one scholar concluded after an exhaustive study of the social evolution of such fairs:

> Obviously the fair in whatever age and of whatever type has furnished informally the opportunity for broadening the experience of those who have in one way or another participated in it. This is especially true of fairs in any degree cosmopolitan—the great mediæval commercial fairs, the world's fairs and expositions and, more pertinently, the great agri-

nesota Fair, no less than its ancestors, serves a wide variety of interests—"like a great daily newspaper which contains something for everyone." *A Story of the Minnesota State Fair,* Minneapolis Board of Education Bull. No. 58, at 39 (1942) (Work Projects Administration Study). The State Fair is thus an actual marketplace of ideas; to some, in fact, it is "probably our most democratic institution." *Id.* at i.[5]

In the "half-permanent . . . city . . . suddenly sprung to life" upon the fairgrounds, W. Neely, *supra,* at vii, the public thoroughfares which traverse and interconnect the various offerings of the Fair resemble nothing quite so much as they do streets, which "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, [and] communicating thoughts between citizens . . . [as] a part of the privileges, immunities, rights, and liberties of citizens." *Hague* v. *CIO,* 307 U.S. at 515 (plurality opinion of Roberts, J., joined by Hughes, C.J., and Black, J.). And the most spacious and recreational areas of the Fair—those surrounding carnival rides and amusements, for example — closely resemble parks, which are, like streets, traditional public forums.[6]

> cultural fairs. Often they have constituted an important, if not the sole, point of vivid personal contact with the larger world. As such they have been and still are a source of [general] information and social intercourse, no less than a means of serving some more clearly defined end or ends.

W. Neely, *supra,* at 156.

[5] Thus the Minnesota State Fair has served as a forum, at many times throughout its history, for communication quite unrelated to its agricultural and industrial exhibits. For example, in the early decades of the 20th Century, "[n]o other fair [was] as popular as the Minnesota Fair as a stopping-place in presidential campaigns." R. Speer & H. Frost, *Minnesota State Fair: The History and Heritage of 100 Years* 111 (1964) (candidates made tours of fairgrounds and delivered speeches there).

[6] *See Hague* v. *CIO,* 307 U.S. at 515-16. *See also* National Park Service Regulations, Public Use and Recreation, Sale and

These open, public, non-rented areas of the Fair are manifestly appropriate places in which to exercise First Amendment rights both to convey and to receive ideas. Such areas provide would-be speakers with access to an ever-changing body of people in constant motion. *Cf. International Society for Krishna Consciousness, Inc.* v. *Rochford,* 585 F.2d 263, 272 (7th Cir. 1978) (airport's public, non-leased areas are appropriate forums for First Amendment activity, in part because of "very high turnover of people"). That such areas are enclosed is clearly immaterial,[7]

Distribution of Printed Matter, 36 C.F.R. § 2.39(a) (1980) (allowing "sale or distribution" of printed matter under park service permit, so long as such printed matter is "not solely commercial advertising"); National Capitol Park Regulations, Demonstrations and Special Events, *id.* § 50.19(b) (providing that "demonstrations" and "special events" may be held without official permit in five Washington, D.C., park areas); National Capitol Park Regulations, Soliciting, Advertising, [and] Sales, *id.* § 50.24(c)(2) (allowing "sale or distribution" of newspapers, leaflets, and pamphlets without official permit in all but a handful of park areas open to general public, even when "conducted without the aid of stands or structures"); National Capitol Park Regulations, Sale and Distribution of Printed Material, *id.* § 50.52(a) *(semble).*

[7] As one court which found that fairgrounds constitute a "first amendment 'public forum'" has noted, "[n]umerous public places far more enclosed and less open than fairgrounds, [*e.g.*, bus and air terminals], have been held to be first amendment forums where persons may circulate and engage in first amendment expression." *International Society for Krishna Consciousness, Inc.* v. *Bowen,* 456 F.Supp. 437, 442 (S.D. Ind. 1978), *aff'd,* 600 F.2d 667 (7th Cir.), *cert. denied,* 444 U.S. 963 (1979). That fairgrounds are enclosed neither confers privacy on fairgoers, who enter a world of unanticipated public encounters within, *see, e.g., Farmer* v. *Moses,* 232 F.Supp. 154, 162 (S.D.N.Y. 1964), nor prevents ease of motion on the Fair's public ways. *See* Argument § III (B) *infra.*

Petitioners mischaracterize the broadly informative function of the Fair when they suggest that a fairgoer enters with a preconceived "express purpose" to spend time "only on those exhibits or concessions for which he paid his entrance fee." Br. Pet. at 22-23. An individual, upon entering the Fair, does not step inescapably

as is the requirement of a nominal entrance fee.[8]

Finally, it is immaterial that the Fair is dedicated to "specific uses"—*e.g.*, agricultural or industrial displays—as well as to generalized "intercommunication." *See Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503, 512, 512 n.6 (1969) (public school's dedication to specific educational uses does not undercut First Amendment's protection of even symbolic speech there, especially since one activity typically pursued at public school is personal intercommunication among students). Indeed, it is for the *very purposes* of communication, exhibition, enlightenment, instruction, and exchange that the Fair is so designed. Compared to streets and parks—where communication among citizens may be both infrequent and incidental; or to courthouses—which have long been open to the public but where citizens go primarily to participate in a specialized event[9]; or to airports and bus terminals—where people go primarily for trans-

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onto some kind of conveyer belt that carries all who board it on a fixed course touching only upon those interests its passengers have already self-consciously formed. Rather, the Fair provides a unique opportunity for "expansion of [each visitor's] interests through contacts with new social groups," not as much through carefully pre-planned encounters as through "the sights, the chance meetings, the casual contacts[,] which temporarily . . . enlist the visitor's attention." W. Neely, *supra*, at 221.

[8] *See, e.g., International Society for Krishna Consciousness, Inc.* v. *Bowen, supra; Farmer* v. *Moses, supra.* That most of us must pay a public transit fare to get to the street or park in which we are then free to speak and to listen certainly does not deprive such places of their character as public forums. Such incidental expenditures of this sort—small and routine—simply facilitate entry *into* and exit *from* a public forum by speakers and listeners, but do nothing to change that forum's character as public.

[9] *See Richmond Newspapers, Inc.* v. *Virginia*, 100 S.Ct. 2814, 2827-29 (1980) (plurality opinion of Burger, C.J., joined by White and Stevens, JJ.).

portation, not communication[10]—a state fairground is a "natural and proper place[ ] for the dissemination of information and opinion." *Schneider* v. *State,* 308 U.S. 147, 163 (1939).[11]

B. *In a Public Forum, the First Amendment Protects Both the Right to Communicate, and the Right to Practice Religion, by Distributing Literature and Soliciting Contributions.*

1. Distributing Literature Is Protected.

Rule 6.05 would confine to booths all exhibition and distribution of leaflets, handbills, tracts, pamphlets, books, scriptures, and other written materials. It thus wholly excludes all such exhibition and distribution from the open, public, non-rented areas of the Fair.

Like ordinances which this Court has struck down because they barred distribution of literature in the streets, the booth rule abridges the freedom "of one rightfully upon the street to impart information through speech or the distribution of literature." *Schneider* v. *State,* 308 U.S. at 160. The freedoms of speech and press embrace the public distribution as well as the writing and printing of books and other literature, for such distribution is essential to publicize, to enlist support for, and to debate

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[10] *See, e.g., International Society for Krishna Consciousness, Inc.* v. *Rochford, supra; Chicago Area Military Project* v. *City of Chicago,* 508 F.2d 921, 925 (7th Cir.), *cert. denied,* 421 U.S. 992 (1975). *See also Wolin* v. *Port of New York Authority,* 392 F.2d 83, 89-90 (2d Cir.) (even bus terminal concourse is a public forum which, in providing access to transit and shops, "resembles a street" and is "attended with noisy crowds and vehicles, some unrest and less than perfect order"), *cert. denied,* 393 U.S. 940 (1968).

[11] State fairs are thus in no way similar to jails, *see Adderley* v. *Florida,* 385 U.S. 39, 47 (1966), or to military installations, *see Greer* v. *Spock,* 424 U.S. 828, 838 (1976)—places which this Court has treated as unsuited to the unfettered public expression of ideas, and thus as subject to restrictive regulations appropriate to their singular functions.

the opinions and beliefs expressed. Thus this Court has struck down ordinances inhibiting the distribution of literature in public places because pamphlets and similar media have served as "historical weapons in the defense of liberty." *Id.* at 162; *Lovell* v. *City of Griffin*, 303 U.S. at 452.

The distribution of religious texts, tracts, and scriptures is triply protected by the First Amendment's guarantees of free speech, free press, and free exercise of religion. *See Murdock* v. *Pennsylvania*, 319 U.S. 105, 108-09 (1943). For when Krishna Consciousness devotees seek to distribute their religious scriptures by hand at the State Fair, they engage not only in speech and press activities but in precisely what this Court has deemed "an age-old form of missionary evangelism—as old as the history of printing presses, . . . a potent force in various religious movements down through the years. . . . occup[ying] the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits." *Id.*[12]

If the First Amendment protects the distribution of literature expressing political or religious opinions or beliefs even at the doors of private homes, *Martin* v. *City of Struthers*, 319 U.S. 141 (1943); *Murdock* v. *Pennsylvania*, *supra*, it surely does so in such public forums as a state fairground. The distinct rights both of distributors and of recipients, *see Martin* v. *City of Struthers*, 319 U.S. at 143; *Marsh* v. *Alabama*, 326 U.S. 501, 508 (1946); *Jamison* v. *Texas*, 318 U.S. 413, 416 (1943), are abridged by a booth rule which bars evangelists from spreading their faith, if simply because such a restriction in effect permits only those *already* interested in that faith to obtain its holy scriptures. *See* Argument § III *infra*.

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[12] That money may be charged for some of the religious literature distributed is, of course, immaterial. *See Murdock* v. *Pennsylvania*, 319 U.S. at 111 ("[T]he mere fact that religious literature is 'sold' . . . does not transform evangelism into a commercial enterprise.").

2. Soliciting Contributions Is Protected.

Rule 6.05 would also confine to booths all solicitation of contributions to political and religious or other charitable causes, eliminating all such activities from the open, public, non-rented areas of the Fair. But the freedoms of speech, press, and religion protect such activities not only for their instrumental role in supporting other expressive endeavors, but also for their intrinsic communicative value. Solicitation is not merely a *means* of financing religious and other expression at some later time; it is itself often a *form* of such expression.

This Court has recently observed that "charitable appeals for funds, on the street or door to door, involve a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment['s freedoms of speech]," *Village of Schaumburg,* 444 U.S. at 632, in part because of "the reality that without solicitation, the flow of such [economic, political, or social] information and advocacy would likely cease." *Id.* Without solicitation as a source of support, it may prove impossible, especially for newly-organized or underfunded groups, to print, distribute, or even articulate religious messages or sacred texts. "It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that a religious organization needs funds to remain a going concern." *Murdock* v. *Pennsylvania,* 319 U.S. at 111. *See also* First Beca Affidavit, paras. 4, 42, at A.10-11, A.24.

Finally, religious solicitation, like the distribution of religious literature, is triply protected by the First Amendment because such solicitation, too, is intertwined not only with speech and press but also with religious exercise. *See, e.g., Virginia State Board of Pharmacy* v. *Virginia Citizens*

Consumer Council, Inc., 425 U.S. 748, 761 (1976); *Cantwell* v. *Connecticut*, 310 U.S. at 307. This Court has consistently distinguished religious solicitation from profit-motivated commercial appeals. *See Village of Schaumburg*, 444 U.S. at 628-32 (summarizing precedents). Not only does religious solicitation supply funds for later undertakings that are themselves not merely commercial; such solicitation also appeals for a direct, material expression of spiritual support for beliefs that lie at the heart of First Amendment protection. *Cf. Buckley* v. *Valeo*, 424 U.S. 1, 19, 20-21 (1976) (*per curiam*) (recognizing that political solicitation and contribution are *themselves* expressive acts); *id.* at 241, 244 (Burger, C.J., concurring in part and dissenting in part).

Dramatically illustrating these general principles, Krishna devotees are under a duty to "involve members of the public in service to the movement's deity through contribution," *Edwards* v. *Maryland State Fair & Agricultural Society*, 628 F.2d 282, 285 (4th Cir. 1980)—that is, to engage the listener or reader in a reciprocal act of donation. Such donation, in turn, itself constitutes a religious expression by the donor in most faiths. This case is no exception. It is a longstanding precept of Krishna Consciousness that sacrifices of material wealth in the service of Krishna are themselves spiritually purifying. *Cf. Buckley* v. *Valeo*, 424 U.S. at 20-21 (*per curiam*) (right to "speak" through campaign contributions); *id.* at 244 (Burger, C.J., concurring in part and dissenting in part).[13]

[13] Giving material contributions is itself a devotional offering linking its offeror with God. *See Caitanya Caritamrta*, Adi-lila, Ch. 9, v. 42; *Bhagavad-gita*, Ch. 9, vv. 27, 28, Ch. 18, v. 5. Where public religious solicitation is a religious ritual mandated by religious doctrine, as is *sankirtan*, *see* First Beca Affidavit, paras. 22, 32, 34, 37, at A.16, A.20-22, its prohibition even more dramatically abridges of the right of free exercise. Respondents believe that *sankirtan* must be practiced as Lord Caitanya con-

3. Allowing Discussion in a Public Forum Cannot Cure the Invalidity of Forbidding Distribution of Writings and Solicitation of Funds There.

Petitioners' offer to permit respondents to "[r]oam throughout . . . the fairgrounds . . . for the purpose of discussing with others their religious beliefs," A.62, cannot rid Rule 6.05 of its abridgment of respondents' First Amendment rights to exhibit and distribute literature and to solicit contributions throughout the fairgrounds. When this Court has struck down laws inhibiting solicitation, it has never been a defense that messages other than those requesting contributions were allowed. *See, e.g., Village of Schaumburg, supra* (ordinance affecting only solicitation). If anything, the line thus drawn amounts to forbidden content censorship. Nor, when this Court has struck down prohibitions on the distribution of writings, has it ever been a defense that oral discussion was not simultaneously forbidden. *See, e.g., Linmark Associates, Inc.* v. *Township of Willingboro,* 431 U.S. 85, 93-94 (1977) ("For Sale" signs banned; such alternatives as word of mouth held to be no substitute); *Schneider* v. *State, supra* (ordinance affecting handbills only). Book-burning is not excused because the author remains free to talk.

Oral communications simply cannot substitute for books, pamphlets, and other writings. The freedom of the press

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sistently performed and taught it—approaching freely every person, whether already spiritually inclined or not. *See, e.g., Caitanya Caritamrta,* Ch. 15, v. 41, Adi-lila, Ch. 8, vv. 20, 28, 34-36. This requirement plainly precludes *sankirtan's* meaningful exercise in a stationary booth, as the court below recognized. *See* A.64 n.7. Other courts have recognized similarly that *sankirtan* cannot be practiced from a booth. *See, e.g., Edwards* v. *Maryland State Fair & Agricultural Society,* 628 F.2d at 284-85. Prohibition of such a ritual in its only meaningful setting thus inflicts far more than "purely economic" harm, contrary to petitioners' conclusory speculation. *See* Br. Pet. 34-35.

obviously assures at least this much.[14] Nor should it seem surprising that it does. Persons passing through a public forum may well wish to accept a written work, and to read, and perhaps re-read, it privately later, rather than to make the larger and more conspicuous commitment of time and demonstration of interest involved in stopping to listen to the distributor's verbal articulation of its contents—and risking the disapproval of others. A written work, moreover, may be shared with and passed on intact to others. *Cf. Kaplan* v. *California,* 413 U.S. 115, 120 (1973) ("A book has a continuing life" inasmuch as "[i]t is passed hand to hand . . . and [has] a continuing impact.") (footnote omitted). And a writing may embody a great deal which the distributor believes or feels but cannot adequately capture orally—especially in the case of religious scriptures that depict or describe what the distributor takes to be revealed truth.

Although nothing in respondents' argument requires reliance on the special characteristics of their religion or of

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[14] Whatever its other implications, *see, e.g.,* Stewart, "Or of the Press," 26 Hast.L.J. 631, 634-36 (1975), the Press Clause at least establishes that the First Amendment's protections are not limited to oral narratives but extend in full to the special power of communication made possible by Gutenberg's 15th Century invention. *See* Van Alstyne, "The Hazards to the Press of Claiming a 'Preferred Position,'" 28 Hast.L.J. 761, 769 n.16 (1977).

The Anglo-American law of evidence, too, has long recognized the distinctive—indeed, the often unique—character of verbal and pictorial *writings* as opposed to oral transmissions. *See, e.g.,* IX W. Holdsworth, *A History of English Law* 154-55 (3d ed. 1944) (estoppel by deed); *id.* at 187 (laws governing the admissibility of documentary evidence); *id.* at 219-22 (relationship between documentary and oral evidence); IV J. Wigmore, *Evidence* §§ 1173-1174 (Chadbourne rev. 1972) (best evidence rule); IX J. Wigmore, *Evidence* § 2400 (1940) (parol evidence rule). In any event, the First Amendment protects not only "the cognitive content of . . . speech," *Cohen* v. *California,* 403 U.S. 15, 26 (1971), but the "emotive function," *id.,* which one medium or style of expression may be capable of serving better than another in a particular context.

its beliefs and rituals, respondents submit that their practice of *sankirtan* exemplifies in particularly striking form the truth that discussion cannot be relied upon as a substitute for written communication. For the primacy of dissemination of Vedic scriptures (and of the books and writings teaching Krishna Consciousness) over all other forms of proselytism has itself long been a fundamental tenet of faith in Krishna Consciousness. Krishna doctrine, indeed, holds that it is *only* by the distribution of devotional books or other religious writings that the slumbering spiritis of most modern souls can be awakened, that only through book distribution can new devotees be made "Krishna Conscious." *See* A. Prabhupada, *Preaching is the Essence* 30, 37, 93-94 (1977) (founder of modern Krishna Consciousness explains that book distribution is faith's most sacred evangelical duty). To a Krishna worshipper, then, talking with the unconverted is at best a vehicle for transmitting written knowledge—knowledge which, according to the devotee's faith, has no expressive equal.[15]

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[15] The respondents' Gaudiya Vaishnava faith teaches that, in the present age (Kali Yuga), people's memories, and their receptivity to spiritual life, are slight; the ancient Vedas (literally, "divinely revealed knowledge") thus cannot be effectively preserved and transmitted orally because such ancient Vedas will, by that process alone, be poorly absorbed and soon forgotten. These Vedas or spiritual teachings were therefore compiled in literary form explicitly to popularize them for assimilation by the ignorant and forgetful masses. *See Srimad-Bhagavatam*, Canto 1, Chap. 4, vv. 17-18, 24-25; *Caitanya Caritamrta*, Madhya-lila, Chap. 20, v. 353. *See also* First Beca Affidavit, paras. 12, 13, at A. 12-13. The compiler-author of these teachings, Vyasa, was foretold by these teachings to be an incarnation of Krishna Himself. *See Srimad-Bhagavatam*, Canto 1, Chap. 3, v. 40; Chap. 5, v. 21; *see also* First Beca Affidavit, para. 12, at A.12. Of these written Vedas, the "mature fruit" is the epic *Srimad-Bhagavatam*, Canto 1, Chap. 1, vv. 2, 3; Chap. 3, v. 41; it is indeed considered "the literary incarnation of God," meant to enlighten all persons in this spiritually dark age. *See id.*, Canto 1, Chap. 3, vv. 40, 43. Writing commentaries on this *Srimad-Bhagavatam* and other Vedic literature, and

C. *Restricting Distribution and Solicitation to Booths Allows Only Communications Which Listeners Take the Initiative to Seek Out or to Make; These Cannot Substitute for the Communications Such a Restriction Prohibits.*

Since the open and public areas of the Fair themselves constitute a public forum in the fullest sense, and since the freedoms to distribute texts and to solicit contributions are distinctly protected under the First Amendment, it follows that the booth rule's prohibition cannot be justified by a mere assertion that "alternatives" of some sort are available to determined speakers or to already "tuned-in" listeners. "[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider* v. *State,* 308 U.S. at 163. And, as this Court has recently stated, there is "no general principle that freedom of speech may be abridged when the speaker's listeners could come by his message by some other means, such as seeking him out and asking him what it is." *Virginia State Board of Pharmacy,* 425 U.S. at 757 n.15. *See also Southeastern Promotions, Ltd.* v. *Conrad,* 420 U.S. 546, 556 (1975).

Notwithstanding this settled doctrine, petitioners suggest that the First Amendment is satisfied simply because distribution and solicitation are not banned *altogether* but are permitted to occur in rented booths. The supposed "alternative" provided by confining all distribution and solicitation to such booths, however, cannot substitute, either quantitatively or qualitatively, for speaker-initiated expression

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copying (in script, or, more recently, in print) and distributing such commentaries, have occupied Vaishnava devotees in respondents' lineage for millenia, from Vyasa's compilation to the great oral and literary *sankirtan* expansion inaugurated by Sri Caitanya, whose followers wrote over half a million verses. *See Caitanya Caritamrta,* Madhya-lila, Chap. 1, vv. 33-45; Antya-lila, Chap. 4, vv. 218-31. *See also* First Beca Affidavit, para. 33, at A.20-21.

in a public forum. For the booth rule allows only those distributions which listeners take the initiative to seek out, and only those contributions which listeners take the initiative to make. But the First Amendment includes a distinct right to meet, mingle, and communicate in a public forum with those who have *not* initiated such encounters or indicated in advance their receptiveness to such communications. *See* Argument § III *infra*.[16]

The speaker's First Amendment protection embraces the right to meet and communicate with those not yet familiar with or sympathetic to his message; the religious proselytizer similarly has a right to preach or pass on the Word to the yet unconverted. To encounter, arouse interest in, awaken the consciousness of, instill commitment among, evoke an affirmative response from, and create an associational link with those previously unaware of, unaffiliated with, or unsympathetic to one's message entails communicative and associational acts qualitatively different from those acts involved when a speaker simply delivers a sought-after message, makes an invited request, or keeps a prior appointment.

The First Amendment, moreover, protects the independent right of listeners to obtain the messages of willing speakers without singling themselves out publicly as already knowledgeable about, or predisposed toward, such messages. *See Lamont* v. *Postmaster General*, 381 U.S. 301, 309 (1965) (striking down as an abridgment of ad-

[16] This right is protected not only by the Speech Clause, but also by the Assembly Clause and by the implied freedom of association. *Cf. Coates* v. *City of Cincinnati*, 402 U.S. at 615 (freedoms of association and assembly entail the right to gather in public places for social or political purposes). *See also Papachristou* v. *City of Jacksonville*, 405 U.S. 156, 164 (1972) (freedom to walk, stroll, and wander, even without pre-arranged "purpose or object," is an historically established constitutional right).

dressees' First Amendment rights a requirement that addressees affirmatively step forward and identify themselves as interested in receiving foreign mail from Communist organizations before any such mail may reach them).

Restricting speech to booths where listeners must deliberately seek it out dramatically shrinks the size of the realistically accessible audience. Listeners obviously cannot take the initiative to seek out messages of which they are unaware, and listeners are unlikely to take the initiative to seek out messages they find it inconvenient to pursue. Thus this Court rejected as a defense to a municipal ban on "For Sale" signs the fact that the ban left alternative channels of communication open. This Court observed that advertising real estate sales in newspapers or in agent listings could not *effectively* substitute for the posting of "For Sale" signs—not least because such alternatives are "less likely to reach persons not deliberately seeking sales information." *Linmark Associates, Inc.* v. *Township of Willingboro*, 431 U.S. at 93.[17] And one court, in holding invalid an airport booth restriction applied to the Society for Krishna Consciousness, similarly observed that the confinement of solicitation efforts to booths "is likely to discourage contributions by requiring the traveler to go to a specific location if he desires to make a contribution. Most people are unlikely to go out of their way on their own initiative to make a contribution." *International Society for Krishna*

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[17] While this Court has noted the availability of alternative means of access to speech that is vulgar or offensive in upholding geographical or temporal regulations of such speech, *see FCC* v. *Pacifica Foundation*, 438 U.S. at 750 n.28 ("Adults who feel the need may purchase tapes and records or go to theaters and nightclubs to hear these [seven dirty] words."); *Young* v. *American Mini Theatres, Inc.*, 427 U.S. at 62 (market for sexually explicit films may be satisfied by exhibition of such films within restricted area), the expression at issue here is at the core, not the fringe, of First Amendment protection. *See* Argument § I(B) *supra*.

Consciousness, Inc. v. *Griffin*, 437 F. Supp. 666, 673 (W.D. Pa. 1977).[18]

Finally, restricting distributions and contributions to those for which already attuned listeners volunteer predictably operates with especially harsh effect against unconventional, unfamiliar, unpopular, or underfinanced speakers and their potential listeners and supporters.[19] The less common and accepted the communicating group, the more it needs to reach out to the public to overcome ignorance or hostility, and the less it can expect self-propelled advances by listeners. This is so especially when a group is not only unconventional, but also conveys a message so unpopular that listeners would actually suffer possible social stigma if they were conspicuously to seek it out. *See, e.g., Lamont* v. *Postmaster General*, 381 U.S. at 307. And limiting contributions to those made by previously informed and willing listeners financially burdens most

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[18] *See also* n.38 *infra*.

[19] This Court has repeatedly expressed sensitivity to restrictions of expression which predictably fall with disproportionate force on such minority groups, whether because such regulations compel public disclosure without regard to its deterrent effect on those who fear majoritarian disapproval or retaliation, *see, e.g., Buckley* v. *Valeo*, 424 U.S. at 71, 74; *Talley* v. *California*, 362 U.S. 60, 64 (1960); *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449 (1958); or because such regulations impose a license tax upon the exercise of First Amendment rights without regard to the deterrent effect of such a tax on all but those groups blessed with a "full purse," *see, e.g., Murdock* v. *Pennsylvania*, 319 U.S. at 112, 115 (invalidating potentially prohibitive fees for distributing literature); or because such regulations encumber speech and assembly in advance with time-consuming procedures without regard to the fact that, for many messages, "timing is of the essence." *See Shuttlesworth* v. *City of Birmingham*, 394 U.S. 147, 162-63 (1969) (Harlan, J., concurring). The injury caused by a rule confining distribution and solicitation to booths rented in advance must similarly be evaluated, as petitioners concede, by the "degree to which the rule falls unevenly on particular groups or persons." Br. Pet. at 15.

those groups, such as "newly organized or minor cults and creeds," *Troyer* v. *Town of Babylon*, 483 F.Supp. 1135, 1139 (E.D.N.Y.), *aff'd mem. sub nom. Troyer* v. *Town of Southampton*, 628 F.2d 1346 (2d Cir.), *aff'd mem.*, 101 S.Ct. 522 (1980), which lack a large pre-existing base of support and therefore need most to solicit funds from newly-won sympathizers. Indeed, this Court has recognized that such groups must reach out with printed information, and need not be forced to wait for others to extend their hands to receive it. *See, e.g., Martin* v. *City of Struthers*, 319 U.S. at 146 ("Door to door distribtuion of circulars is essential to the poorly financed causes of little people."). Such outreach is even more necessary to obtain the funds which alone can make such distribution possible.

Taken together, the booth rule's restriction of distribution and solicitation to those contacts which the listener initiates, and the rule's imposition of a rental fee, offer an unattractive package indeed to the poor or fledgling religion. The rule commands: Pay the state from your limited resources, well in advance, a significant fee that entitles you to express yourselves and to appeal for support from that location at the Fair which least promises you a viable chance to reach out and expand your fold, and which offers you *no* chance to have the kind of interchange that a pamphleter or solicitor can have only with the fairgoer who does not seek him out.

II.

The Booth Rule's Ban Could Be Justified Only by Demonstrating a Close Fit to a Compelling State Purpose Unrelated to the Suppression of Protected Expression or of Religious Exercise.

Viewed either as (1) a complete prohibition, within the public forum defined by the State Fair's street and park areas,[20] of some messages but not others—of all written communications,[21] and of those specific oral communications that solicit charitable contributions[22]—or as (2) a selective ban, throughout the larger public forum defined by the Fair as a whole, of those written communications and those solicitations, written or oral, which are not listener-initiated,[23] Rule 6.05 would plainly require more convincing justification than "a mere time, place, and manner restriction." *Virginia State Board of Pharmacy*, 425 U.S. at 771.

But even if one were to disregard altogether the several respects in which Rule 6.05's preclusion of particular categories of protected speech and religious practice falls unevenly upon speakers and messages, the rule would still be unconstitutional unless it could be affirmatively shown to serve compelling interests unrelated to the suppression of protected activities,[24] and to "do so by narrowly drawn

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[20] *See* Argument § I(A) *supra*.

[21] *See* Argument §§ I(B)(1), I(B)(3) *supra*.

[22] *See* Argument §§ I(B)(2), I(B)(3) *supra*.

[23] *See* Argument § I(C) *supra*.

[24] Nothing turns here upon the precise characterization one employs to describe "the quality of the governmental interest which must appear." *United States* v. *O'Brien*, 391 U.S. 367, 376 (1968). That the interest must at least be weightier than the reduction of mere administrative or economic burdens is clear. *See, e.g., Schneider* v. *State*, 308 U.S. at 164. Nothing more is needed to show that

regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms." *Village of Schaumburg*, 444 U.S. at 637; *Grayned* v. *City of Rockford*, 408 U.S. at 114, 116-17, 119; *United States* v. *O'Brien*, 391 U.S. at 376-77; *NAACP* v. *Button*, 371 U.S. 415, 438 (1963). Moreover, even if one were to regard Rule 6.05 as nothing more than a routine regulation of time, place, or manner, and thus as subject only to the above requirements, the rule could not be upheld without at least a showing that it "leave[s] open ample alternative channels for communication of the information." *Virginia State Board of Pharmacy*, 425 U.S. at 771 (affirming this proposition even as to purely commercial speech). *See also Linmark Associates, Inc.* v. *Township of Willingboro*, 431 U.S. at 93 *(semble)*.

The Minnesota Supreme Court correctly held that not even such lesser burdens could be met in this case. *See* A.63-65. That "[t]he alternatives [left open by Rule 6.05] are far from satisfactory," *id.*, has already been shown. *See* Argument §§ I(B)(3), I(C) *supra*. Equally fundamental, Rule 6.05 "is not genuinely concerned with the place of the speech . . . or the manner of the speech . . . or any other value 'unrelated to the suppression of free expression,'" *id.*, *quoting International Society for Krishna Consciousness, Inc.* v. *Conlisk*, 374 F.Supp. 1010, 1015 (N.D. Ill. 1973), *quoting United States* v. *O'Brien*, 391 U.S. at 377, but with its very impact upon the consciousness of those who have not affirmatively sought it out. The only purpose that directly *or* closely fits the rule's enforcement against such expression as that proposed by respon-

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Rule 6.05 falls short of the constitutional minimum, since any interests beyond cost-saving and convenience that Rule 6.05 may arguably serve are either illegitimate, *see* Argument § III *infra*, or fit the rule too loosely to serve as its justification. *See* Argument § IV *infra*.

dents is a forbidden contraction in the marketplace of ideas itself. *See* Argument § III *infra*. As to the ancillary purposes that Rule 6.05 might indirectly serve—those purposes that are not forbidden in themselves—the rule is so imprecisely drawn and ill fitting, so substantially over- and under-inclusive, that the rule falls far short of that "[p]recision of regulation," *NAACP* v. *Button*, 371 U.S. at 438, which this Court has invariably required when activities centrally protected by the First Amendment have been at stake. *See* Argument § IV *infra*. Finally, that the rule treats religious and political expression on a par with purely profit-motivated commercial speech is certainly not a justification of the rule, but a further infirmity. *See* Argument § V *infra*.

III.

The Booth Rule's Primary Effect and Its Only Closely-Fitting Purpose—Withholding Messages From Those Who Have Not Signalled Advance Interest in or Sympathy Toward Them—Is Itself Impermissible Under the First Amendment.

By excluding all distribution of literature and solicitation of contributions from the public areas of the State Fairgrounds, Rule 6.05 corrals in booths all such speech and religious practice and all speakers and solicitors who desire to engage in such speech. The clear and manifestly calculated effect of this confinement is to limit distributions and solicitations at the the Fair to those fairgoers whose predisposition toward such communications propels them toward particular booths at which they may read, buy, or contribute in accord with a checklist prepared in advance. Petitioners concede as much when they suggest that, "if Sankirtan were limited to a booth, those fairgoers who are genuinely curious about or supportive of [Krishna Con-

sciousness] would probably visit the booth and make the necessary purchases or contributions." Br. Pet. at 35.

Petitioners indeed purport to justify the exclusion of all other fairgoers from exposure to distribution and solicitation efforts by arguing that the state has a legitimate interest in protecting the "rights of fair patrons" to be free of "unwanted speech." *Id.* at 21-23. Not only is this purported state interest not compelling; as embodied in Rule 6.05, it is *per se* impermissible.

As petitioners would have it, the state may forbid speaker-initiated contacts altogether in the absence of a potential listener's advance expression—indicated by approaching a booth—of an affirmative desire to receive particular communications. This Court rejected just such a contention in *Lamont* v. *Postmaster General,* 381 U.S. at 307. While an actual recipient may be empowered by government to shield himself from repeated intrusions by communications from a source the recipient has previously found offensive, *see Rowan* v. *United States Post Office,* 397 U.S. 728, 737-38 (1970), the state may not limit communications, especially in a public forum, to those which a potential recipient has affirmatively invited. *See* Argument § III(B) *infra.*

A. *Deliberately Preserving Ignorance of Unanticipated Messages Defies the Central Purposes of the First Amendment.*

Curtailing free expression until it is coextensive with the pre-existing sensibilities of its recipients would shrink the marketplace of ideas beyond recognition. The First Amendment protects expression not merely as an outlet, but also—and indeed primarily—as a medium of exchange of ideas, opinions, and beliefs. Speech is protected for its capacity to persuade, not only for its ability to express conclusions to those who already share them.

Similarly, the freedoms of association and of religious exercise include more than the ability to practice one's received belief in solitude or in the company of one's fellow believers or sympathizers. Such freedoms also include the freedom to convert the previously *unconverted* and to form associations with former strangers.

The First Amendment therefore protects uninvited exposure to messages and encounters which are novel, unfamiliar, unusual, or disfavored—all on the premise that an open society cannot flourish among closed minds and shielded souls. In short, the freedoms of speech, religion, and association protect the *expansion* of consciousness, not its confinement. And the value of informed choice accordingly prevents the state from abridging speech on the "paternalistic" premise that the public—including all of the potential listeners, sympathizers or converts it contains—is better kept "in ignorance." *Virginia State Board of Pharmacy*, 425 U.S. at 769-70.

For these reasons, speech may never be shut off simply because it disrupts some listeners' complacency, and certainly not because a legislative majority believes that such speech *might* do so. For this Court has written that free speech can

> indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.

Terminiello v. *City of Chicago*, 337 U.S. 1, 4 (1949). Just as government may not compel one to hear out a message one finds undesirable, so too it may not preempt the

"full opportunity for everyone to receive the message" before deciding how to respond. *Young* v. *American Mini Theatres, Inc.*, 427 U.S. at 76-77 (Powell, J., concurring). The potential unwillingness of a listener to accede to another's expression of devotion—including a request that the listener contribute to the practice of the speaker's religion—can never justify the state's silencing of the religious speaker, even where that speaker offends the listener's own religion. *Cantwell* v. *Connecticut*, 310 U.S. at 309-10. Even more plainly, the state may not silence the religious speaker who simply, as here, invites others by non-offensive and noncoercive means to join the speaker's faith, or to make some small sacrifice to signify a willingness to consider joining it.

B. *In a Public Forum Through Which Crowds Move Freely, the Constitution Leaves Solely With Individuals, Not With the State, the Choice to Decline Proffered Communications.*

Petitioners contend that state officials' wholly speculative assumption that some fairgoers might be annoyed, offended, or unwilling to endure religious distributions or solicitations made in the public areas of the Fair justifies a rule precluding *all* fairgoers from encountering these activities. *See* Br. Pet. at 21-24. In so contending, petitioners disregard this Court's teaching that a state may not, consonant with the First Amendment, substitute its judgment for that of the listener as to whether receiving a particular non-commercial, non-offensive communication is desirable. *See Martin* v. *City of Struthers*, 319 U.S. at 143 (Because the bearer of a message or the recipient of a written tract may "in fact [be] glad to receive it" even if it was not anticipated, an ordinance may not "protect" citizens from unanticipated communications "whether particular citizens want that protection or not.").

Wherever there is a willing speaker, the First Amendment protects that speaker's communication from being silenced in the name of hypothetically unwilling listeners—so long as such listeners are free to "avoid further bombardment of their sensibilities simply by averting their eyes," *Cohen* v. *California,* 403 U.S. at 21, by moving out of earshot, or by throwing unwanted literature away, *Consolidated Edison Co.* v. *Public Service Commission,* 100 S.Ct. 2326, 2336 (1980), as fairgoers plainly are. As Judge Weinstein concisely put the matter in the context of door-to-door leafleting and solicitation, "the Constitution does not allow government to create [even] a rebuttable presumption that people do not wish to be exposed to a particular class of ideas, or mode of expression. To override strong first amendment interests, the individual desiring privacy must assume the burden of indicating the choice to be left alone." *Troyer* v. *Town of Babylon,* 483 F. Supp. at 1138.

Since the First Amendment prevents a state from banning door-to-door speech on the presumption that listeners might be unwilling to hear it in their homes, *Martin* v. *City of Struthers, supra,* where the interests of privacy and solitude are strongest, it surely forbids similar regulation in a public forum, where there can, by definition, be little expectation of privacy or insulation from unanticipated and unsolicited ideas and expressions. *See, e.g., Farmer* v. *Moses,* 232 F. Supp. at 162 (World's Fair). Where privacy interests are attenuated (as at a state fair), and where the prohibited expressive activities are non-intrusive (as are distribution and solicitation, to be pursued further only with receptive persons), the state is constitutionally forbidden to shut off speech "solely to protect others from hearing it." *Cohen* v. *California,* 403 U.S. at 21 (preclusive regulation to protect interests depends on showing that "substantial

privacy interests are being invaded in an essentially intolerable manner").

Public distribution and solicitation among shifting crowds in a state fairground present none of the highly exceptional circumstances in which this Court has permitted government to preempt individuals' own choices of whether to decline a given communication. Even with a booth rule, people strolling through the public thoroughfares and park areas of a state fair are beckoned from all sides by exhibitors, vendors, and speakers vying for their attention. Across the space of the 125-acre fairgrounds in this case, "crowds are not captive but move freely to those places and booths they choose." *International Society for Krishna Consciousness, Inc.* v. *State Fair of Texas,* 461 F. Supp. 721 (N.D. Tex. 1978). Fairgoers can readily gain the same ambulatory freedom from unwanted leafleting or soliciting as they can from unwelcome oral encounters and from unwanted exhibitors in the booths themselves. *See* Opinion Below at A. 70. Petitioners' suggestion that individual fairgoers cannot walk away from or tune out unwelcome speech because the fairgrounds are "closed," Br. Pet. at 23, is specious. Were this true, no fairgoer could choose even among the booths whose messages he *desired* to hear.

Thus, fairgoers are in no sense a "captive audience," unable to avoid or to tune out the speakers' communication. They are not like homeowners who, even locked behind closed doors, cannot avoid the blare of sound trucks, *see Kovacs* v. *Cooper,* 336 U.S. 77, 87 (1949), nor like commuters who must stand or sit immobile for long periods continuously exposed to placard advertisements. *See Lehman* v. *City of Shaker Heights,* 418 U.S. 298, 304 (1974); *id.* at 307 (Douglas, J., concurring).

Moreover, petitioners' suggestion that solicitors and leafleters in public areas will differ from those in booths

by inflicting "repeated" communications on fairgoers, *id.*, is entirely unsupported in the record and is surely incorrect. Any fairgoer who backtracks may twice hear, and twice walk away from, the repeated cries of even a booth-bound hawker; and the imagined difficulty of avoiding repeated encounters with a few roving book distributors or solicitors in a large fairground is sheer fantasy. At all events, it is no more difficult for a fairgoer to shake his head, withhold his hand, or move on when offered a scripture or asked for a contribution, than it is for a fairgoer similarly to decline to listen to such oral proselytism, repeated or otherwise, as even Rule 6.05 would allow in the Fair's public thoroughfares.

Nor are charitable leafleting and solicitation in any sense comparable to the offensive displays which the government might sometimes save the unsuspecting listener or viewer the trouble of tuning out, *see Young* v. *American Mini Theatres, Inc., supra; FCC* v. *Pacifica Foundation, supra.* Petitioners seek to preclude speech at the core, not at the margin, of the First Amendment's protection. *See* Argument § I(B) *supra.*

Nor, finally, is a Fair the sort of arena in which some special calm and decorum are required for the success of the enterprise. "Tidiness and tranquility are not qualities ordinarily found at fairs, nor are they qualities enshrined in the First Amendment." *Edwards* v. *Maryland State Fair & Agricultural Society,* 628 F.2d at 286. At a state fair, some degree of cacaphony among competing voices is the natural medium of communication, not a symptom of its frustration. Here, "verbal tumult [and] discord . . . are [not only] necessary side effects of . . . open debate," *Cohen* v. *California,* 430 U.S. at 24-25; they are its very essence.

Since the nature of neither the audience, nor the speech, nor the forum calls for a governmental hand on the

tuner, the state must leave squarely with each individual listener the decision whether to tune out—to decline, reject, or discard—the public communications at issue in this case. In short, the "unwilling audience" must be left "to turn away" from whatever speech it does not care to hear. *See FCC* v. *Pacifica Foundation,* 438 U.S. at 749 n.27. There is simply *no need* in a state fair for government to erect a shield around each listener—to surround *each listener* with a sound-proof, sight-free isolation booth created by law.

IV.

The Booth Rule's Supposed Secondary Purposes—Maintaining Order and Preventing Fraud—Fit the Rule Far Too Loosely to Justify It.

Neither the language of Rule 6.05, nor the construction given Rule 6.05 by the responsible state officials, identifies fraud, disorder, or congestion as the rule's targets.[25] Petitioners nonetheless attempt to justify the booth rule as serving substantial governmental interests in preventing fraud, *see* Br. Pet. at 24-29, and in promoting order and safety, *see id.* at 29-33; and petitioners claim that these interests would be frustrated by any regulation except one corralling all distribution and solicitation activities into booths without regard to whether any threat is actually posed to legitimate state interests in each particular case. *See id.* at 37-39.

Respondents neither seek protection for deceptive or disruptive expression, nor dispute the weight of the state's interests in regulating fraud and disorder. Respondents claim instead that the booth rule is at once suspiciously underinclusive and egregiously overinclusive with respect to

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[25] *See* Stip. of Facts, paras. 13, 16, at A.34-35.

both these goals. Even a regulation that "furthers an important or substantial government interest [which is] unrelated to the suppression of free expression" may inflict no "incidental restriction on alleged First Amendment freedoms . . . greater than is essential to the furtherance of that interest." *United States* v. *O'Brien*, 391 U.S. at 377.

The booth rule's restriction of protected expression is not merely "incidental." *See* Argument §§ I, II, III *supra*. But even assuming, for the sake of argument, that it *were* incidental, the rule's inhibition of core First Amendment freedoms would remain vastly broader than the effective prevention of fraud and maintenance of order at the Fair could ever require. The rule's overinclusiveness could readily be avoided through alternative state regulations much more narrowly and precisely tailored to these goals—as the state's own highest court itself determined.[26] This Court has consistently rejected regulations such as that involved here—regulations which, in pursuing a shortcut to some public purpose, needlessly trample First Amendment freedoms in their wake. *See* Argument § II *supra*.

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[26] As this Court has noted:

> Where . . . differing speculations as to the effect of a statute are plausible, we think it appropriate to defer to the decision of the [state's highest court], "armed as it was with the knowledge of the facts and the circumstances concerning the passage and potential impact of [the statute at issue], and familiar with the milieu in which that provision would operate."

Michael M. v. *Superior Court*, 49 U.S.L.W. 4273, 4275 n.10 (U.S. March 23, 1981) (plurality opinion of Rehnquist, J., joined by Burger, C.J., Stewart, and Powell, JJ.) *quoting Reitman* v. *Mulkey*, 387 U.S. 369, 378-79 (1967). *Cf. Minnesota* v. *Clover Leaf Creamery Co.*, 101 S.Ct. 715, 731-35 (1981) (Stevens, J., dissenting).

A. *The Booth Rule Bans Some, and Substantially Chills Other, Protected Communications Which Neither Deceive Nor Cause Congestion.*

The rule through which petitioners claim to be fighting fraud and disorder at the State Fair grossly restricts much expression having absolutely no connection with these harms. In so doing, the rule is facially overbroad, and is unconstitutional even if considered as a "time, place, or manner" regulation, for "in its reach it prohibits constitutionally protected conduct . . . [and thus] sweeps within its prohibition what may not be punished under the First and Fourteenth Amendments." *Grayned* v. *City of Rockford*, 408 U.S. at 114-15. *See* Argument § I *supra*.

The booth rule also inhibits speech in a second, separate —but similarly unconstitutional—way. By threatening punishment for engaging in proscribed activities—distribution and solicitation—whose boundaries are imprecise and insufficiently discernible in advance,[27] the rule powerfully deters other protected activities, including many that the state disavows any desire or need to regulate. The booth rule thus not only sweeps protected expression within its ban but also draws a line between the expression it permits and the expression it prohibits which chills much expression whose relation to that line is uncertain.

The ban on solicitation in the public areas of the Fair, for example, may severely chill many aspects of the verbal proselytism which petitioners describe current State Fair policy as protecting. Despite petitioners' assurance that

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[27] The present policy of the Minnesota State Fair is to request a booth-rule violator to leave the fairgrounds, and to expel him if he refuses. *See* Heffron Affidavit, para. 15, at A.27. Such a violator may also be prosecuted for a misdemeanor under Minn. Stat. § 37.16. *See* Opinion Below at A.60 n.2. In any case, expulsion and prosecution are similar inasmuch as both prevent expression attempted from without a booth.

Krishnas may speak freely with fairgoers in the Fair's open areas, and may from there "direct interested donors or purchasers to their booth," Br. Pet. at 36, it is far from clear that the ban on solicitation would not be interpreted to sweep just such advocacy and such informational statements within its reach. *See* n.28 *infra*. For statements of this sort might well trigger an arrest, *see* Stip. of Facts, para. 14, at A.34, and this prospect may in turn deter not merely much of what various religious and political speakers might *say* at the Fair, but also their very decision to *attend* the Fair in order to spread their beliefs and seek donations there.

This Court has regarded regulations rife with such ambiguous possibilities for enforcement as threats to free public discussion incompatible with the First Amendment. *See Hynes* v. *Mayor of Oradell*, 425 U.S. 610, 620-22 (1976). Indeed, in at least two other closely parallel instances, this Court has specifically struck down rules which, in banning "solicitations," threatened impermissibly to chill spoken statements often indistinguishable from such solicitation both from the standpoint of the potential speaker and from that of the potential enforcer. In *Thomas* v. *Collins*, 323 U.S. 516 (1945), a statute requiring labor organizers to register before "soliciting" union members was struck down because the Court found that "the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker . . . wholly at the mercy of the varied understanding of his hearers. . . . Such a distinction offers no security for free discussion." *Id.* at 535-36. The vice of the anti-solicitation statute there was not merely that instances of enforcement might be inconsistent, but that the uncertainty and doubt speakers might entertain as to what statements were forbidden could well cause them not to speak at all. *Id.* at 537. And in *In re Primus*, 436 U.S. 412 (1978), this Court again condemned

the chilling potential inherent in the ambiguity of an anti-solicitation rule.[28] To one who would advocate contributions to a political or religious cause at the State Fair, or to one who would merely inform fairgoers as to how to make such donations, the booth rule's solicitation ban poses no less a threat, and creates no less a chill.[29]

B. *The First Amendment Forbids Prophylactic Rules Which Ban or Substantially Chill Protected Expression, and Serve Permissible State Purposes Only Indirectly.*

Petitioners defend the use of the booth rule to forbid some protected communications and to deter others without anywhere alleging that all acts thereby prevented are deceptive or disruptive. Petitioners merely appear to find total prophylaxis easier and cheaper to administer than individualized regulation of actually deceitful or disorderly conduct. *See* Br. Pet. at 25, 27-28, 38. But this preference for convenience is not petitioners' to indulge. "Broad prophylactic rules in the area of free expression are suspect. . . . Precision of regulation must be the touchstone."

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[28] Notwithstanding [the state's] concession in this Court, it is far from clear that a lawyer may communicate the organization's offer of legal assistance [even] at an *informational* meeting . . . without breaching the literal terms of the [anti-solicitation] Rule.

In re Primus, 436 U.S. at 433 (emphasis added).

[29] *Cf. Coates* v. *City of Cincinnati*, 402 U.S. at 614 (annoyance to others states an "unacceptable standard"). The chill created by the state's interpretation of Rule 6.05 is heightened by the fact that state authorities have *already* radically stretched the literal text of the rule—which covers only the "sale, or distribution of any merchandise, including printed or written material," *see* Stip. of Facts, para. 13, at A.34—to encompass solicitation of contributions to a religion. How such a stretch could be counted on by devotees to stop short of *other* verbal appeals is utterly unclear, especially since "solicitation may be viewed as one form of proselytism." A.70 (Todd, J., dissenting in part).

NAACP v. *Button*, 371 U.S. 415, 438 (1963). Because broady prophylactic rules, aimed only indirectly at serving such legitimate state purposes as the control of fraud or of congestion, may chill many harmless and protected communications, the First Amendment requires the state to proceed through particularized rules applied on "an individualized basis." *Grayned* v. *City of Rockford*, 408 U.S. at 119-20. *See also Village of Schaumburg*, 444 U.S. at 637.[30]

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[30] This principle was reiterated in *In re Primus*, 436 U.S. at 434, where this Court held that a state may not enforce a rule broadly prohibiting lawyers' unsolicited offers of services against organizations which "engage[] in litigation for effective political expression and association, as well as . . . communicati[on] [of] useful information to the public." *Id.* at 431. Because banning such solicitation would predictably chill proper as well as improper solicitation in connection with such litigation, the Court held that the First Amendment allows only restrospective penalties for such actual misconduct as overreaching or misrepresentation, *id.* at 433-34, not punishment of "mere solicitation unaccompanied by [specific] proof of any . . . substantive evils." *Id.* at 433. Petitioners here enjoy no more constitutional latitude than did the state bar in *Primus* to regulate prophylactically expression lying at the core of the First Amendment.

Prophylactic regulation is permissible only where it falls *solely* upon expression *outside* the core of the First Amendment. When a regulation's line-drawing involves little "threat to the free market in ideas and expression," such as when the activities regulated are "on the borderline between pornography and artistic expression," *Young* v. *American Mini Theatres, Inc.*, 427 U.S. at 61; *see also FCC* v. *Pacifica Foundation*, 438 U.S. at 743, a greater potential for chilling contemplated expression has been tolerated than when "the free dissemination of ideas of social and political significance" is at stake. *Young* v. *American Mini Theatres, Inc.* 427 U.S. at 61. Moreover, where expression is motivated purely by commercial profit, this Court has upheld "prophylactic measures whose objective is the prevention of harm before it occurs." *Ohralik* v. *Ohio State Bar Association*, 436 U.S. 447, 464 (1978). But, of course, neither marginal nor commercial speech is at stake in this case.

C. *Narrow Rules Which Precisely Regulate Fraud and Congestion, and Which Are Far Less Restrictive of Protected Expression Than the Booth Rule, Remain Open to the State.*

The record in this case is utterly devoid of any showing that fraudulent solicitations,[31] or crowd congestion in the vicinity of public distributions or solicitations, cannot be successfully regulated by means significantly less restrictive than the booth rule. Without such a showing, courts considering preclusive rules in similar circumstances have consistently rejected state justifications based on the kinds of speculative possibilities and undifferentiated fears on which the state relies here.[32] While respondents have dem-

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[31] Petitioners raise not even a spectre of fraudulent *distributions*, as opposed to fraudulent *solicitations*. *See* Br. Pet. at 24-29. Thus the booth rule is especially overinclusive in sweeping distribution within its ban. And, so far as the control of fraudulent solicitation is concerned, the rule's failure on its face even to *address* solicitation *as such* seriously undercuts the state's current reliance on this goal.

[32] *See Tinker* v. *Des Moines Independent Community School District*, 393 U.S. at 508 ("In our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression."). Yet the affidavit of Fair Manager Heffron, which constitutes virtually the entire factual record on the basis of which the state claims that the booth rule is essential to prevent congestion at the Fair, contains nothing more than general statistics about the Minnesota State Fair and irrelevant speculations about what might ensue if the booth rule were lifted and an "*unlimited number* of [Krishna Consciousness] devotees [were given] access to *all public areas* of the fairgrounds to *dance, sing or chant* or to sell . . . and distribute *other products without restriction* . . . ." Second Heffron Affidavit at A.44-49 (emphasis added). Respondents of course urge no such thing.

Similar mere speculations were found insufficient in such cases as *Edwards* v. *Maryland State Fair & Agricultural Society*, 628 F.2d at 286 (4th Cir. 1980); *International Society for Krishna Consciousness, Inc.* v. *Colorado State Fair & Industrial Exposition*, 610 P.2d 486, 489 n.1 (Colo. 1980). *Cf. Wright* v. *Chief of Transit Police*, 558 F.2d 67, 69 (2d Cir. 1977) (rejecting state's conclusory justification of blanket ban on distribution in subways on basis of undifferentiated "public safety" considerations, inasmuch as it cannot be simply assumed, without more, that less restrictive regulations could not achieve that goal).

onstrated their willingness throughout this action to submit to numerous less restrictive regulations, *see* Stip. of Facts, para. 23, at A. 36; Opinion Below at A. 66 & n. 9, petitioners have neither made any effort to experiment with such regulations,[33] nor presented any legitimate reason for ruling them out.[34]

1. Less Restrictive Means of Preventing Fraud.

This Court has never upheld a law broadly restricting speech, press, or religious exercise on the sole basis that, without the restriction, fraud would be more likely to occur or more difficult to restrain or redress. Rather, as this Court recently reiterated in *Village of Schaumburg, supra,* the government's "legitimate interest in preventing fraud can be better served by measures less intrusive than a direct prohibition on solicitation. Fraudulent misrepresentation can be prohibited and the penal laws used to punish such conduct directly." 444 U.S. at 637. This doctrine has long standing in First Amendment law. *See Schneider* v. *State,* 308 U.S. at 164; *Cantwell* v. *Connecticut,* 310 U.S. at 306. The circumstances of this case present no reason to accept petitioners' invitation to overturn it.

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[33] Thus there is no indication in the record that even one of the Krishna Consciousness members supposedly guilty of misconduct on prior occasions was proceeded against civilly or criminally under any of the state's generally applicable laws, and there is no indication that such more particular measures as are suggested below were ever invoked.

[34] Petitioners' allusions to the difficulties or incremental expenses that might be encountered in administering individualized prosecutions—as opposed to enforcing a broad, preclusive ban on all public distribution or solicitation—are unavailing. *See* Br. Pet. at 27, 28, 30. This Court long ago acknowledged that individualized prosecutions may be "less efficient and convenient" than preclusive rules, but that "the answer [to such countervailing claims of administrative convenience] is that considerations of this sort do not empower [government] to abridge freedom of speech and press." *Schneider* v. *State,* 308 U.S. at 164. *See also Village of Schaumburg,* 444 U.S. at 639; *Edwards* v. *Maryland State Fair & Agricultural Society,* 628 F.2d at 287.

Nothing stands in the way of petitioners' banning and individually penalizing fraudulent solicitations at the Fair, or of their enacting specific regulations which would aid in the enforcement of such bans and penalties without abridging communication protected by the First Amendment. For example, solicitors might be required to register at the Fair's security office, daily or otherwise, before soliciting —in order "to establish [their] identity and . . . authority to act for the cause which [they] purport to represent." *Cantwell* v. *Connecticut*, 310 U.S. at 306. Those who engage in solicitation might even be required to wear identification badges bearing the names of their organizations, thereby avoiding the appearance of an official Fair imprimatur.[35] In this way, the small fraction of political or religious solicitations which may be fraudulent could be policed and individually prosecuted after the fact. But the state cannot combat fraud by barring, wholesale, every communicative context in which it might arise.[36]

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[35] It was indeed the requirements of disclosure and identification that this Court recently suggested as supplements to criminal prosecution in *Village of Schaumburg*, 444 U.S. at 637-38 n.12, in a passage petitioners misleadingly cite to support the validity of a sweeping ban. Br. Pet. at 28-29.

[36] *See also* n.31 *supra*. This Court has never viewed the potential for what petitioners colorfully call "hit and run" fraudulent solicitations in such open spaces as parks and streets, *see* Br. Pet. at 25, as a reason to make an exception to this doctrine. Any such potential for abuse furnishes no more basis for an exception in the context of a state fair. *See* Argument § I(A) *supra*. The problems of policing peripatetic fraud at a fair are surely no greater than are the problems of doing so in other open areas. No one would suggest that expression in midtown Manhattan or on the Mall in Washington, D.C., should be confined to booths—although the problems of area, numbers of people, foreign visitors, and the difficulty of tracing offenders must be many times as great in the cities as at a state fair. In any event, if petitioners were right, then violations of Rule 6.05 itself would be as difficult to detect and control as would violations of less drastic regulations proposed in Rule 6.05's stead.

2. Less Restrictive Means of Preventing Congestion.

In rejecting petitioners' contention below that the need to maintain order on the fairgrounds could justify the exclusion of all political and religious distribution and solicitation from such public forums, the Minnesota Supreme Court properly noted that "[c]onduct that tends to create disorder on the fairgrounds may be *specifically* prohibited." A. 65 (emphasis added).[37] The state could readily avoid any undue congestion attending such activities by, for example, limiting the total number of roving distributors and solicitors allowed to move about each day, *cf. Richmond*

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[37] Indeed, that maintaining public order and combatting congestion are even *genuine goals* of the booth restriction is brought into serious question by the rule's striking underinclusiveness with respect to these objectives in particular. The rule includes within its ban all solicitation and distribution of literature except from a booth, but not oral proselytizing throughout the public areas of the fairgrounds. Petitioners assert that even "a few roving solicitors" can break down the Fair's "crowd control." Br. Pet. at 30-31. Yet, as both the majority, *see* A. 64, and the minority, *see* A. 70-71, of the court below agreed, roving oral proselytizing in fact implicates exactly the same supposed state interests in crowd control as do solicitation and distribution. An operator may gather as large a crowd as any pamphleter or solicitor. And as this Court has written in parallel circumstances, "the underinclusiveness of the statute . . . undermines the likelihood of a genuine state interest . . . [and] the plausibility of the state's purported concern . . . ." *First National Bank* v. *Bellotti*, 435 U.S. 765, 793 (1978) (statute supposedly preventing corporate use of funds for expression with which some shareholders might disagree included within its ban referendum but not lobbying expenditures, and included banks and business corporations but not other interest-holding organizations). *See also Smith* v. *Daily Mail Publishing Co.*, 443 U.S. 97, 104-05 (1979) (statute supposedly protecting anonymity of juvenile offenders included within its ban newspapers but not other media); *id.* at 110 (Rehnquist, J., concurring in judgment) ("It is difficult to take very seriously West Virginia's asserted need to preserve the anonymity of its youthful offenders when it permits other equally, if not more, effective means of mass communication to distribute this information without fear of punishment.").

Newspapers, Inc. v. *Virginia*, 100 S.Ct. at 2830 n.18 (plurality opinion of Burger, C.J., joined by White and Stevens, JJ.); by proscribing solicitation and distribution too close to entrances or exits, or to crowds standing in line for other events; by specifically prohibiting and individually penalizing obstruction of the free passage of pedestrians, *see Cameron* v. *Johnson*, 390 U.S. 611, 612, 616-17 (1968); or by enforcing other similarly narrow and precise regulations shown to be necessary by experience and not merely rationalized as useful to cope with imagined difficulties.[38] Such restrictions have been found workable in the course of their implementation by other courts both in the state fair con-

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[38] Falling into just this category is the suggestion of the minority opinion below, *see* A. 71-72, that confusion and crowding might be so exacerbated by fairgoers' "fumbling for and dropping money," *id.* at A. 71, as to warrant a rule requiring all sales and donations to be *consummated* at a rented booth. *Accord, International Society for Krishna Consciousness, Inc.* v. *Eaves*, 601 F.2d 809, 828 (5th Cir. 1979) (upholding rule that donations at airport may be accepted only at designated booths). There is nothing in the record to support such a notion, and petitioners do not appear to press it in this Court. Needless to say, even this alternative—while less restrictive than a rule requiring distributions and solicitations to be confined to booths from start to finish—would cut deeply into the ability of peripatetic devotees to collect the funds they need from persons willing to buy literature or make donations but unwilling to "walk a mile" to do so. It may be worthy of note that the proposed U.S. General Services Administration Rules and Regulations Governing Public Buildings and Grounds, 45 Fed. Reg. 10382 (1980) (proposed to be codified in 41 C.F.R. § 101-20.707(a)(6)), which would have prohibited any person from "receiv[ing] or accept[ing] any donation of money except at a 'solicitation booth' . . . ," was deleted from the final rule. *See* 46 Fed. Reg. 3523, 3524 (1981) (to be codified in 41 C.F.R. parts 101-20). *See also* Federal Aviation Administration Soliciting and Leafletting Procedures at National and Dulles International Airports, 45 Fed. Reg. 35314 (1980) (to be codified in 14 C.F.R. part 159), *effective date deferred*, 45 Fed. Reg. 49917 (1980); Opinion of Assistant Solicitor, Parks and Recreation, U.S. Dep't of Interior (Sept. 11, 1978) (booth rule considered but rejected for national park areas) (unreported).

text[39] and in the context of other public places.[40] They cannot simply be bypassed here.

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[39] *See, e.g., Wilson* v. *Alameda County Fair,* No. C 79-1467 SAW (N.D.Cal. Dec. 5, 1979) (stipulation and order) (area limitations and identification badges); *Khurana* v. *Monroe County Fair,* No. 973138 (E.D.Mich. July 28, 1980) (consent judgment) (peripatetic solicitors must wear identification badges and remain at least five feet from booths); *Mills* v. *State Fair of West Virginia,* Civ. No. 78-5167 (S.D.W.Va. May 29, 1979) (consent order) (solicitors must wear identification badges and remain at least fifteen feet from entrances and exits); *Gorrick* v. *Erie County Agricultural Society,* No. 78-505 (W.D.N.Y. Aug. 24, 1978) (dismissed pursuant to agreement of parties) (limitation on number of roving solicitors); *International Society for Krishna Consciousness, Inc.* v. *New Mexico State Fair,* Civ. No. 77-0568 (D.N.M. March 2, 1978) (dismissed pursuant to settlement) (numbers and area limitations); *International Society for Krishna Consciousness, Inc.* v. *Wetzel,* No. 77-846 Phx WPC (D.Ariz. Nov. 7, 1977) (Arizona State Fair) (exclusion from certain buildings) (dismissed as moot following agreement of parties).

[40] *See, e.g., International Society for Krishna Consciousness, Inc.* v. *Rochford,* 585 F.2d at 272-73 (religious expression allowed in all areas of airport except for specifically proscribed places where such expression might, *e.g.,* seriously impede traffic flow); *International Society for Krishna Consciousness, Inc.* v. *McAvey,* 450 F. Supp. 1265 (S.D.N.Y. 1978) (specific place regulations, not wholesale ban, upheld at World Trade Center). *But see* Opinion Below at A. 66 n.10 (Minnesota Supreme Court's caveat that such place regulation cannot be mechanically copied, but must be tailored specifically to each factual setting). At an earlier stage of these proceedings, petitioners themselves proposed a set of alternative regulations which they asked the courts below to impose if the booth rule were held to be unconstitutional. Defendants' Memorandum in Support of Cross Motion for Summary Judgment 14-15 (filed Aug. 18, 1978). The Fair's proposals included a limitation on the total number of solicitors and literature distributors, a prohibition against approaching patrons standing in lines or seated for a performance, identification and registration of leafleters and solicitors, and a ban on approaching patrons below a given age. Respondents have not objected to these alternatives, and although petitioners no longer advocate their adoption, petitioners have never successfully explained why these alternatives in particular are not adequate to meet the state's needs.

V.

Sustaining the Judgment Below Portends No Dilemma Between Favoritism and Chaos.

To justify denying the right to distribute literature and to solicit contributions to all but those who confine such activities to leased booths, petitioners finally paint a completely unsubstantiated picture of the "chaos" they claim would ensue unless nothing short of so broad and preclusive a rule as Rule 6.05 were allowed. Br. Pet. at 32. Petitioners further mischaracterize respondents' claim as an appeal for exceptional treatment relative to other groups—a claim for "entitle[ment] to *greater* constitutional protection than [that accorded] the free speech rights of competing organizations." Br. Pet. at 21 (emphasis added). *See also id.* at 19-20. Both these assertions are groundless.

A. *It Is Not Favoritism Toward Rights of Political and Religious Speech and Free Exercise to Strike Down Rules That Abridge Such Rights, Nor Is It Favoritism to Treat Political and Religious Speech Differently From Commercial Speech.*

Respondents claim that the booth rule is facially invalid insofar as it bars distribution and solicitation by political and religious message-bearers in the open and public areas of the Fair. Respondents seek no unique treatment within this category.[41] Respondents claim only that their activities, and those of other groups and individuals seeking to exercise speech and religious rights similarly located at the core of the First Amendment, merit treatment more

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[41] To be sure, insofar as respondents' religion mandates *sankirtan*—peripatetic public solicitation of religious contributions and distribution of religious texts, *see* n.13 *supra*—the claims advanced herein are strengthened, *see Wisconsin* v. *Yoder*, 406 U.S. 205, 222-29, 235-36 (1972); *Sherbert* v. *Verner*, 374 U.S. 398, 406 (1963). But respondents' case in no way *depends* upon any such showing.

accommodating that which the Constitution mandates with respect to commercial speakers.

The booth rule is unconstitutional because it wholly excludes substantial categories of fundamentally protected communications from a public forum, *see* Argument § I *supra,* while failing to serve any permissible and significant state purpose in a sufficiently narrow and precise manner. *See* Argument §§ II, III, IV *supra.* Such a rule is not saved by the fact that it sweeps protected as well as unproctected expression equally within its ban: that is one of the rule's fatal infirmities. That the prohibition applies identically "to all persons or groups who wish to sell or exhibit . . . [or to] solicit contributions or distribute materials at the fair," Br. Pet. at 11, does not cure but aggravates its illegitimacy.

As this Court has stated in another contest involving an ordinance which abridged the rights to distribute religious literature and to solicit contributions, "the fact that the ordinance is 'nondiscriminatory' [in this sense] is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike." *Murdock* v. *Pennsylvania,* 319 U.S. at 112. Even though this Court has extended to "peddlers" some protection under the First Amendment, it has clearly stated the caveat that "commercial speech remains 'not undifferentiable from other forms of speech.'" *Virginia State Board of Pharmacy,* 425 U.S. at 771-72 n.25 (citation omitted).[42]

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[42] *Compare In re Primus,* 436 U.S. at 434 ("Where political expression . . . is at issue, this Court has not tolerated the de-

Petitioners need not, under the First Amendment, extend to commercial exhibitors, distributors, or solicitors the same latitude in the open, public street and park areas of the State Fair that they must extend there to religious and political speakers.[43] Indeed, to treat these unequals equally would be a harsh, and unconstitutional, form of discrimination.[44]

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gree of imprecision that often characterizes government regulation of the conduct of commercial affairs."), *with Ohralik* v. *Ohio State Bar Association*, 436 U.S. at 459, 467 (upholding anti-solicitation rule as applied to commercial solicitation solely for pecuniary motives, and distinguishing *Primus'* rejection of similar rule as to solicitation intertwined with political association and expression).

[43] Government is not free to regulate religious and political speakers as strictly as commercial vendors. *Compare Martin* v. *City of Struthers, supra* (ordinance banning handbilling by political and religious distributors held unconstitutional), *with Breard* v. *City of Alexandria*, 341 U.S. 622, 641 (1951) (upholding ordinance requiring householder consent to commercial solicitation, and observing that similar ordinance might abridge rights of "advocates of ideas," as opposed to "solicitors for gadgets or brushes"). *Also compare International Society for Krishna Consciousness, Inc.* v. *City of New Orleans*, 347 F.Supp. 945 (E.D. La. 1972) (striking down ordinance barring charitable, religious, and educational solicitation in the Vieux Carre—the French Quarter, heart of New Orleans tourism—as an abridgment of religious exercise requiring compelling justification, which state did not show), *with City of New Orleans* v. *Dukes*, 427 U.S. 297 (1976) (upholding as rational exercise of local economic power a regulation evicting all but two pre-existing pushcart food vendors from the streets of the Vieux Carre).

[44] As this Court has noted elsewhere, "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Jenness* v. *Fortson*, 403 U.S. 431, 442 (1971). *See also Griffin* v. *Illinois*, 351 U.S. 12, 23 (1956) (Frankfurter, J., concurring in judgment) ("To sanction such a ruthless consequence would justify a latter-day Anatole France to add one more item to his ironic comments on the 'majestic equality' of the law . . . '[which] forbids the rich as well as the poor to sleep under bridges, [and] to beg in the streets[.]'") (citation omitted).

B. *Sustaining the Judgment Below Threatens No Chaos From Religious, Political, or Other Expression at the Core of the First Amendment.*

Petitioners engage in the sheerest speculation when they suggest that even the loosely ordered liberty of the Fair will break down if religious and political distribution and solicitation are not subject to Rule 6.05's wholesale banishment from the open and public areas of the Fair. Br. Pet. at 31, 32.

First, the state need not permit commercial vendors to operate in these areas. *See* Argument § V(A) *supra.* Second, the state can point to absolutely no evidence on this record, or on the records of the many other cases in which courts have struck down similar booth rules in recent years,[45] that large numbers of other distributors and solicitors will in fact flock to the Fair's open areas to undertake the arduous and often unrewarding work of initiating contacts with fairgoers.[46] Finally, the state is free to set narrow time, place, or manner regulations which would modulate the numbers and locations of this flock should its growth prove truly problematic. *See* Argument § IV *supra.* Respondents' claim is only that the state cannot, in the name of order, impose exile.

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[45] *See, e.g., Edwards* v. *Maryland State Fair & Agricultural Society, supra* (4th Cir. 1980); *International Society for Krishna Consciousness, Inc.* v. *Bowen, supra* (7th Cir. 1979); *International Society for Krishna Consciousness, Inc.* v. *State Fair of Texas, supra* (N.D.Tex. 1978); *International Society for Krishna Consciousness, Inc.* v. *Colorado State Fair & Industrial Exposition, supra* (Colo. 1980).

[46] Exemption from the booth rule is in no way comparable to exemption from a work requirement, *Sherbert* v. *Verner, supra,* or from a requirement of military service, *Gillette* v. *United States,* 401 U.S. 437 (1971), or indeed from any other requirement that the insincere and indolent might be tempted to challenge as a way of obtaining benefits or avoiding burdens at little or no personal cost. Particularly in a case such as this, therefore, fears of unmanageably numerous requests for exemptions are inherently implausible—as the history of booth-rule's invalidation itself strongly suggests.

CONCLUSION

The highest court of Minnesota found no basis for regarding that state's interests here as requiring abridgment of the First Amendment rights at issue in this case. Both the deference to which such a determination is entitled, and the protection which First Amendment activities are generally due, strongly counsel affirming that decision.

Respectfully submitted,

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* Counsel for respondents acknowledge the assistance of Kathleen M. Sullivan (J.D. 1981) of Cambridge, Mass., in the preparation of this brief.

No. 80-795

IN THE

Supreme Court of the United States

October Term, 1980

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, the Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,

Petitioners,

vs.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., and JOSEPH BECA, on behalf of themselves and the INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS members,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

REPLY BRIEF

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REPLY BRIEF

INTRODUCTION

Respondents' brief notably abandons one of the primary arguments they had advanced up to this point and substantially rejects the basis of the Minnesota Supreme Court's Opinion. That is, they are no longer claiming that peripatetic solicitation is a unique religious practice. Resp. Br. at 19-20, 47. Before that and other substantive issues are addressed, however, there are several statements or implications in the brief of Respondents (hereinafter "Krishnas" or "ISKCON") which should be clarified.*

First, it is inaccurate to state that the Krishnas have not sought to distribute flags, flowers, maps and other "greeting gifts." See Resp. Br. at 2, fn. 7 and 3-4. They agreed only not to solicit money for such items. Stip. of Facts at para. 11, J.A. (Joint Appendix) 33-34. The record, in fact, establishes that at the 1977 Minnesota State Fair Krishnas distributed *and* sold these products, the latter activity in violation of a temporary restraining order. J.A. 29-30, 53-57.

Second, the Krishnas suggest that there is minimal evidence that they engaged in fraudulent, deceptive or disorderly conduct at the 1977 Fair, because there was no evidence of criminal arrests and prosecutions. Resp. Br. at 2, fn. 7. The absence of such evidence does not establish their premise because of the fact that Petitioners (State Fair) have enforced the booth rule (Rule 6.05) by evicting violators from the fairgrounds rather than by criminal prosecutions. Michael Heffron Affidavit at para. 15, J.A. 25. See also Resp. Br. at 37, fn. 27.

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* Shortly before the submission of this brief for printing, Petitioners received telephone requests from certain organizations seeking consent to their filing briefs amicus curiae in support of Respondents. Since those briefs had not been received at the time of printing, however, it is not possible to address any new arguments which may be raised therein.

There are also repeated suggestions in the Brief of Respondents that ISKCON is a new, financially burdened religious organization whose members innocently go about their work of collecting barely enough funds for ISKCON to survive. The innuendoes of naivete and innocence are refuted by their misconduct in this case and in cases like *International Society for Krishna Consciousness v. Barber*, No. 77-CV-328 (N.D. N.Y., filed Aug. 25, 1980), Brief For The State of New York, amicus curiae, at A.15, 22-32. In addition, the implication of subsistence funding, even if relevant to this case, is questionable. It is not based on the record of this or any other case and, in fact, is contrary to common sense.[1]

Finally, ISKCON gratuitously offers its own views as to the priorities of purposes for the booth rule. It states that the primary rationale of the regulation is the prohibition of speaker-initiated contacts and the secondary purposes are the prevention of fraud and maintaining of order. Resp. Br. at 28, 35. To the contrary, the State Fair does not assign significantly greater importance to any of the governmental interests advanced by the rule.

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[1] Respondent Joseph Beca testified that during five or six days of the 1977 Minnesota Fair he personally collected about $900. Beca Deposition at 10, 23. Since 17 or 18 Krishnas solicited funds during the same period, it is reasonable to conclude that approximately $15,300 to $16,200 were collected during less than one week at only one location. *Id.* Indeed, it has been estimated that ISKCON has collected $75,000,000 in the United States in the last decade, enabling it to purchase "10 large farms, a $3 million-a-year publishing business, square blocks of real estate . . ., a chain of vegetarian restaurants" and to build a 5,000-square-foot temple made of 63 tons of marble and 3 tons of carved Indian teakwood on a 2,000-acre farm in West Virginia. Los Angeles Times, February 15, 1981, at 1, col. 1, and 13, col. 1.

ARGUMENT

I. ISKCON'S NOW UNEQUIVOCAL CONCESSION THAT SANKIRTAN DOES NOT DISTINGUISH IT FROM OTHER RELIGIONS UNDERCUTS THE MINNESOTA SUPREME COURT'S DECISION, STRENGTHENS THE POLICE POWER INTERESTS OF THE STATE, AND ESTABLISHES THAT THE BOOTH RULE IS NO MORE THAN A PLACE AND MANNER RESTRICTION.

A. The Krishnas Concede They Are Not Entitled To Greater First Amendment Protections Than Other Religious And Political Groups.

Except for a one-sentence response to a question at oral argument below, the Krishnas now concede for the first time that their practice of peripatetic Sankirtan does not make their religion unique for purposes of First Amendment analysis. Resp. Br. at 19-20 and 47. Thus, they now seek to have the booth rule invalidated with respect to all non-commercial organizations.

This is an important admission. It recognizes that to treat ISKCON more favorably than other religions, political parties and similar organizations on the basis of ISKCON's tenets is to violate the First and Fourteenth Amendments' rights of those groups. See Brief For Pet. at 17-21. Sankirtan does not set ISKCON apart from other groups with similar rights to disseminate their views, distribute books or solicit funds.

This concession also directly disavows the majority opinion of the Minnesota Supreme Court. That opinion was plainly founded on the court's inferential conclusion that Sankirtan was unique to ISKCON. J.A. 64 and n. 7, 67. In fact, the Court

stated that even though the booth rule significantly furthered substantial state interests, it was unconstitutional as applied to members of ISKCON. *Id.*; see also dissenting opinion of Todd, J., J.A. 72 ("the majority appears only to focus on the impact of ISKCON's activities on this problem."). Therefore, without its inference that Sankirtan compelled peripatetic conduct different from that of other religions, even the majority of the Minnesota Supreme Court would not have invalidated the booth rule. The Krishnas are now making an argument which is not supported by the decision below.

B. Under ISKCON's Present Theory The Admitted Substantial Public Purposes Served By The Booth Rule Are Greatly Magnified.

As noted above, the Minnesota Supreme Court expressly acknowledged that the booth rule serves substantial governmental interests. Majority Opinion, J.A. 64. *See also,* Heffron Affidavit, J.A. 45, which was not contested at the trial court. In summary they are the protection of the constitutional rights of competing concessionaires/exhibitors and fair patrons, the prevention or control of fraud and deception by roving solicitors and the promotion of order and safety on the fairgrounds. These interests are described in the Brief For Petitioners at 18-32.

There is no need here to reiterate the details of those public purposes served by the booth rule, but it is important to recognize that the problems to which the rule is directed would be substantially magnified under the Krishnas' current position. That is, if all religious, political, news and similar organizations were entitled to an exemption from the booth rule the predictable instances of fraudulent solicitations, disorder, con-

gestion and annoyances of fair patrons and participants would surely multiply.[2]

There are already at least 40 other religious, political and news media groups renting booth space at the Minnesota Fair. J.A. 46 at para. 10 and 49-52. Of course, there are numerous other organizations like them who would surely solicit and distribute materials at the fair if they knew they would be allowed to do so peripatetically. At first blush, it may have been tempting for the Krishnas to argue that giving only them a special exemption to the booth rule would not significantly impair the State Fair's ability to accomplish its police power objectives on the fairgrounds. That claim, however, certainly cannot be made in the face of exemptions for at least 40 and perhaps two or three times that many other organizations. If each group had only 10 members (ISKCON had 17 or 18 members at the 1977 Fair) conducting roving solicitations and distributions on 40-45 acres of the fairgrounds, that could mean at least 400 and perhaps close to 1,000 peripatetic vendors. Crowd control, safety protection and apprehension of fraudulent solicitors would be practically impossible. See, Brief For Petitioners at 22-32.

ISKCON's own arguments reinforce the conclusion that many, if not all, other religious groups and political parties

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[2] ISKCON's suggestion that only a small fraction of political or religious solicitations would be fraudulent is speculative at best. Resp. Brief at 43. The records in this case; ISKCON v. Barber, *supra*; and ISKCON v. State Fair of Texas, 461 F. Supp. 719 (N.D. Texas 1978) belie this claim. The occurrences of fraud are bound to increase if all non-commercial solicitations were permitted peripatetically. Not only would the number of organizations with solicitors multiply, it is likely that there would be an increase in the number of persons who claim to represent certain groups but who, in fact, are not in any way affiliated with such organizations.

would truly take advantage of any booth rule exemption. The Krishnas' claims that peripatetic conduct is much more effective and financially productive than being confined to a booth would not be lost on their competitors. Resp. Br. at 23-25.[3] This fact is strongly supported by the brief on behalf of *amici curiae* American Civil Liberties Union, Minnesota Civil Liberties Union and the National Council of Churches.

Consequently, there is every reason to believe that numerous groups and persons with identical religious and free speech rights would demand exemption from the booth rule. Since the State Fair staff is not qualified to judge the legitimacy of their religious or political bases, they would have no choice but to acquiesce. The resulting pockets of congestion, harassment of fair patrons and commercial booth operators and incidences of fraud would greatly exacerbate an already challenging situation.

C. The Krishnas Implicitly Recognize That The Booth Rule Is No More Than A Place And Manner Restriction.

By agreeing that they are not entitled to special, individualized exemption from the booth rule, the Krishnas necessarily reinforce the applicability of the "reasonable time, place and manner" test of *Grayned v. City of Rockford*, 408 U.S. 104, 115 (1972). Since the booth rule is solely a restriction on the place and manner of solicitations and distributions, it should be judged as to whether it is reasonable under the surrounding circumstances.[4]

ISKCON tries to avoid this test by making a bootstrap argument that the booth rule is totally preclusive of speech, press

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[3] Particularly during election year fairs, the demands on the State Fair by political candidates for special treatment are aready great.

[4] The Minnesota Supreme Court has already concluded that the rule promotes substantial public purposes. J.A. 64.

and religious activity and, therefore, should be judged by a stricter standard. Resp. Br. at 7-8, 26. Not only does this mark the first time the Krishnas have proffered that claim, it is erroneous.[5]

The Krishnas' argument that the booth rule is totally preclusive is based on their reasoning that it prohibits the Krishnas completely from certain areas *within* the fairgrounds. Resp. Br. at 7-8. That reasoning is not only strained, it is inconsistent with cases dealing with total prohibitions of First Amendment rights. Under ISKCON's view, there could never be a reasonable time, place and manner restriction, since every such restriction necessarily is preclusive in some respect.[6] There are inevitably always some areas and times within any forum that will be off limits for certain activities. This fact does not make consonant restrictions totally preclusive. If the State Fair had denied access to the entire fairgrounds, it would clearly be acting in a totally preclusive manner. In con-

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[5] ISKCON also implies that the booth rule is directed to the content of speech and religious beliefs. Resp. Br. at 9, 26. This claim is purely a makeweight argument that is directly contrary to the Stipulation of Facts which expressly states the parties' agreement that the booth rule does not discriminate against ISKCON or other groups "for any reason, including their religious or political views." Stip. of Facts at para. 22, J.A. 36.

The Krishnas also suggest that the booth rule may chill exercise of activities other than fund-raising solicitations. Resp. Br. at 37-40. This claim is not supported by the Minnesota Supreme Court's decision and has been rejected by this Court in Broadrick v. Oklahoma, 413 U.S. 601 (1973) (prohibition on soliciting "any assessment, subscription, or contribution for any political organization, candidacy or other political purpose" held to be neither vague nor overbroad.) *Id.* at 606. As this Court stated, "it is all but frivolous to suggest that [this prohibition] fails to give adequate warning of what activities it proscribes. . . ." *Id.* at 607.

The cases cited by the Krishnas are not to the contrary. Unlike Broadrick, neither In Re Primus, 436 U.S. 412 (1978) (proscription on solicitation of clients for political purposes) nor Thomas v. Collins, 323 U.S. 516 (1945) (regulation of union organizing) involved fund-raising.

[6] Compare the anti-noise ordinance which was upheld in Grayned v. City of Rockford, 408 U.S. 104 (1972).

trast, the State Fair allows everyone *into* the fairgrounds, rents booth space and, in addition, gives everyone the same opportunities to talk to all willing listeners as they walk about the open grounds.

Cases relied on by ISKCON in support of its claim that the booth rule is totally preclusive are inapposite. For example, the local ordinance struck down in *Linmark Associates, Inc. v. Township of Willingboro,* 431 U.S. 85 (1977) absolutely forbid the placement of "For Sale" or "Sold" signs even on the lawns of private homes, except model homes, everywhere within the municipal limits. Likewise, in *Schneider v. State,* 308 U.S. 147 (1939) and *Lovell v. City of Griffin,* 303 U.S. 444 (1938) this Court faced regulations which were completely prohibitive. In *Schneider* the ordinance denied all access to a potential audience by prohibiting distribution, with or without a booth, of handbills in all streets, parks or similar areas. The ordinance in *Lovell* was almost identical, except that it prohibited distributions everywhere within the city unless a discretionary permit were obtained first. There is simply no comparison between the regulations in these cases and the booth rule, which merely establishes the place(s) within the fairgrounds where sales, solicitations and distributions may occur.[7]

It follows that the booth rule, being non-content oriented and non-preclusive, must be judged under the "time, place and manner" test. It passes this test, even as forumulated by ISKCON, which asserts that the State Fair must show a com-

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[7] ISKCON implies without argument that the space rental fee for a booth is possibly suspect, Resp. Br. at 25. The rental fee is not and has never been an issue in this case. The rental of booth space is a fixed charge based upon the size and location of the booth and is related to the cost of property rental, electricity, water and other services. This fee is indisputably constitutional under Cox v. New Hampshire, 312 U.S. 569 (1941) ($300 fee for parade license upheld as administrative expense).

pelling public interest for the rule,[8] that the rule must be narrowly drawn to serve those interests[9] and that it must allow ample alternative channels of communication.[10] Resp. Br. at 26-27.

The reasonableness of the booth rule has been addressed in the Brief For Petitioners at 11-12 and 37-39 and is further supported by some of the cases cited by ISKCON. In *Wolin v. Port Authority of New York*, 392 F.2d 83 (2d Cir. 1968), *cert. denied*, 393 U.S. 940, the court of appeals expressly stated that leafleting within the Port Authority bus terminal could be restricted to "specific places within the building where the right of expression may be exercised."[11] *Id.* at 94. The court in *Wolin* struck down a blanket prohibition against *all* leafleting in the terminal. See also, *Chicago Area Military Project v. Chicago*, 508 F.2d 921 (7th Cir. 1975), *cert. denied*, 421 U.S. 992 (approved lower court order restricting leafleting to certain areas within an airport) and *United States v. Boesewetter*, 463 F. Supp. 370, 372 (D.D.C. 1978) (dismissed prosecutions for violations of federal regulation totally precluding sales and distributions inside the Kennedy Center but stated that a booth-type arrangement within the Center would be a reasonable time, place and manner restriction). *See also, ISKCON v. Evans*, 440 F. Supp. 414, 424-25 (S.D. Ohio 1977) (fairgrounds not on a constitutional plane with open air parks or street corners).

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[8] The governmental interests are already established. Brief For Petitioners at 18-32; Minnesota Supreme Court Opinion, J.A. 64.

[9] The narrowness of the booth rule is addressed *infra* at Argument II.

[10] Adequate alternative means of communicating are available under the rule by virtue of its having no effect at all on oral communications and its permitting sales, solicitations and distributions of materials at a booth or booths on an equal basis with everyone.

[11] This statement in Wolin, *supra*, also shows the fallacy of the Krishnas' claim that a booth rule constitutes a total proscription of First Amendment rights.

II. THE BOOTH RULE IS A REASONABLE AND NARROWLY DRAFTED VEHICLE FOR SERVING ACKNOWLEDGED PUBLIC PURPOSES.

A. The Public Purposes Are Clear And Recognized By The Minnesota Supreme Court.

The Krishnas assert that because the booth rule does not expressly set forth all of its purposes as a part of its contents, it is somehow contitutionally infirm. Resp. Br. at 35-36. This claim is both illogical and contrary to the Minnesota Supreme Court's conclusion that the rule promotes substantial governmental interests.

If the Krishnas were correct on this issue, it would mean that every statute and regulation would be suspect if it did not explicitly spell out its public purposes. Legislative and administrative bodies should not be expected to express governmental interests which are obvious. It is generally sufficient if the decisions leading to the promulgation of a governmental regulation are adequately supported by any set of facts or objectives in existence at the time of enactment. *Petitioner v. Superior Court of Sonoma County*, 49 U.S.L.W. 4273, 4274 (March 23, 1981); *Minnesota v. Clover Leaf Creamery Co.*, 101 S.Ct. 715, 724 (1981); *United States v. Maryland Savings Share Ins. Co.*, 400 U.S. 4, 6 (1970); and *McGowan v. Maryland*, 366 U.S. 420, 426-27 (1961). Under this Court's decision in *Petitioner v. Superior Court of Sonoma County, supra* at 4274, "great deference" should be given to the Minnesota Supreme Court's finding that the State Fair booth rule furthers substantial governmental purposes. J.A. 64.

B. ISKCON's Suggested Less Restrictive Means For Achieving The Governmental Purposes Are Ineffective And Potentially Violative Of The First Amendment.

The Krishnas argue that the booth rule should be replaced with a system whereby the State Fair provides daily registration of all peripatetic solicitors, requires them to wear identification badges, limits the total number of solicitors and relies only on criminal prosecutions or rules expressly prohibiting fraud and deception for controlling fraudulent activities on the fairgrounds. Resp. Br. at 42-46.

The reasons why such alternatives are impractical are set forth in Brief For Petitioners at 27-29, 37-39. It is worth emphasizing, however, certain aspects of ISKCON's recommendations. The Krishnas' suggestion that the State Fair promulgate a separate rule against fraudulent solicitations and sales is unworkable and superfluous. Detection and prosecution of deceptive roving vendors and solicitors are practically impossible on a fairgrounds crowded with thousands of people who are, for the most part, strangers to each other. The problem of fraudulent sales and solicitations is at least two-fold. On one hand, this and other cases have shown that some members of religious organizations misrepresent their identities or products in order to collect money from unsuspecting persons. In addition, there are sales and solicitations by persons who identify themselves as agents of religious or political groups when, in fact, they have no connection whatsoever to any such organization. Again, this second aspect of the difficulty of policing fraudulent conduct will be amplified by the addition

of unlimited non-commercial groups throughout the fairgrounds.[12]

Furthermore, a system requiring the State Fair staff to set up special daily registrations for roving solicitors and vendors would be unworkable *and* probably violative of the religion clauses of the First Amendment itself. With perhaps dozens or scores of roving solicitors on the fairgrounds, it would not really be possible for the fair staff to know at any given time who were registered and who were not. They do not have nearly enough personnel to monitor such a system. Once the public becomes aware that roving vendors and solicitors are permitted on the fairgrounds, the fairgoers themselves would be of little help in determining whether they were properly registered and wearing accurate identification.

A registration system also would pose serious problems for the Fair in deciding whether all or only some of the applicants should be registered on given days. If even 25 to 40 religious and political groups demanded that 10 vendors each be permitted to roam the fairgrounds, the State Fair administration would be forced to become actively entangled in deciding how to keep the total number limited and who would be allowed to solicit peripatetically.

Even under ISKCON's own recommendation, the State Fair would have the right to place reasonable limits on the number of roving solicitors and vendors. That task would necessarily

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[12] Fraudulent sales at booths are much easier to control. It is easier to identify and locate the offender at a booth, and, as to those booth employees who leave the jurisdiction, the State Fair may suspend or revoke booth privileges. Moreover, the problem of a person falsely claiming to be a member of a particular group is substantially eliminated, since the imposter would have to solicit within the booth of the organization he or she falsely claims to represent.

lead to the State Fair's choosing among competing religions, political parties and news media. These demands would surely increase on weekends and days of good weather when attendance at the Fair rises and could lead to constitutional difficulty. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

Indeed, ISKCON's proposal would require the State Fair to establish the kind of regulatory system that this Court struck down in *Cantwell v. Connecticut*, 310 U.S. at 301-02 (1940). That is, the State Fair would be required to adopt a solicitation licensing program based upon a determination of whether or not proposed roving vendors and solicitors are agents of truly bona fide religions, political parties and news organizations. Not only is the State Fair unqualified to make those judgments, it could not permissibly do so under the First Amendment. The suggested registration system, therefore, is fraught with First Amendment violations.

III. THE BOOTH RULE EFFECTUATES A REASONABLE BALANCE BETWEEN THE RIGHTS OF SPEAKERS AND LISTENERS.

ISKCON attempts to detract from the reasonableness of the booth rule's restrictions by arguing that it allows only listener-initiated communications. Resp. Br. at 21-23, 28-35. That is not true.[13]

The booth rule creates, however, a reasonable balance between speaker-initiated and listener-initiated communications. It is recognition of the fact that as fairgoers move about the fair grounds they come in contact with sales and solicitation pitches from booth vendors. In such circumstances they then have the freedom to approach such booths to pursue their interests and respond to the "speaker."[14] They (the listeners) also have the freedom to ignore the speaker-initiated communications by walking away with the knowledge that the "speaker" will not follow them and harass them into leaving the fair or making a financial contribution. The booth rule also helps insure that donors and purchasers are not misled or intentionally deceived as to the identities and purposes of the organizations soliciting them.

It is true, of course, that the First Amendment authorizes the communication of unpopular views. That is not the real issue in this case, since the booth rule does not prevent or even

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[13] ISKCON concedes the weakness of its "listener-initiated speech" argument by acknowledging that fairgoers frequently are the subjects of communications started by booth-bound hawkers, Resp. Br. at 34. Thus, its claim that the booth rule erects a shield around each listener is mere hyperbole. Resp. Br. at 35.

[14] The claim that fairgoers would feel stigmatized by being seen going to a religious or political booth is preposterous. See, Brief Amici Curiae of American Civil Liberties Union, et al., at 23. That alleged fear does not seem to prevent fairgoers from going to the carnival "freak shows" and similar attractions.

limit such expressions. Throughout the fairgrounds pure speech may be initiated by anyone. Every person on the fairgrounds may initiate any conversation he or she desires, even on the subject of religious beliefs. The abuses and problems to which the rule and the fairgoers' complaints are directed are the peripatetic sales, solicitations and distributions.

It is suggested by the Krishnas that the State Fair's concern regarding harassment of fairgoers by roving solicitors, Brief For Petitioners at 21-23, is speculative and fanciful. Resp. Br. at 33-34. That argument also is betrayed by the record here and in other cases like *ISKCON v. Barber, supra.*

As a result of 5-6 days of peripatetic solicitations by the Krishnas at the 1977 Minnesota Fair, the State Fair received 234 complaints and five sworn affidavits directly relating to their activities. This is not speculation.

The annoyances and harassments of fair patrons would certainly multiply by the addition of other religions, political and news organizations engaged in roving activities. The booth rule, however, guards against such intrusions while striking a permissible balance as to the needs and interests of all speakers and listeners.

CONCLUSION

The Krishnas are not entitled to greater rights under or exemptions from the booth rule than any other religious, political or news organization. Since the rule is a reasonable restriction only on the place and manner of everyone's sales, solicitations and distributions equally and without any effect on pure speech rights, the State Fair respectfully requests this Court to reverse the decision of the Minnesota Supreme Court and to affirm the booth rule in all respects.

Respectfully submitted,

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APR 7 1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, et al.,

Petitioners,

—v.—

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION, THE MINNESOTA CIVIL LIBERTIES UNION, AND THE NATIONAL COUNCIL OF CHURCHES, *AMICI CURIAE*

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INTEREST OF AMICI CURIAE*

The American Civil Liberties Union (the "ACLU") is a national, non-partisan, non-profit membership organization dedicated to protecting personal liberty through a vigorous defense of the safeguards embodied in the Bill of Rights. Since our founding in 1920 we have appeared before this Court, either as counsel or amicus, on more than one thousand occasions in support of those safeguards. We have been particularly concerned with preservation of freedom of speech and free exercise of religion, both of which are at issue here.

The ACLU is especially concerned that those principles are threatened by the positions advocated by the Petitioners, by the State of Minnesota, by the states which are participating as amici in this action, and

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* Letters of consent are being lodged with the Clerk.

by the many states, districts and counties which have enacted booth rules which curtail the dissemination of ideas.

The National Council of Churches in the United States of America is the cooperative agency of thirty-two Protestant and Eastern Orthodox national religious bodies with an aggregate membership of over 40,000,000. It is deeply interested in the First Amendment rights of religious bodies and other organizations to both solicit funds from the public and purvey their message with minimal regulation by government.

For these reasons, the ACLU, the Minnesota Civil Liberties Union, an ACLU state affiliate, and the National Council of Churches respectfully urge this Court to uphold the judgment of the Minnesota Supreme Court that the booth rule is an unjustified and impermissible infringement of First Amendment rights as applied to members of ISKCON (and other religious, political or civic groups) who attempt to distribute and sell non-commercial literature to, or solicit contributions from, visitors to state fairs.

SUMMARY OF ARGUMENT

The Minnesota "booth rule" prohibits the sale or distribution of any literature on the Fairgrounds except at a rented booth, and has been interpreted by Fair officials and the Ramsey County District Court to prohibit the solicitation and collection of donations except at such booths. (Joint Appendix [hereinafter "J.A."] 60-62.) As applied to political and civic groups, or to religious groups like ISKCON, the booth rule is, and was held by the Minnesota Supreme Court to be, an unconstitutional infringement on freedom of speech and the free exercise of religion. ISKCON v. Heffron, 229 N.W.2d 79 (1980) (J.A. 58).

The fairgrounds are a public forum where First Amendment activities cannot be prohibited, and can only be regulated if they are truly incompatible with the forum's

function and the regulation is necessary to advance a substantial or compelling state interest. The distribution and sale of religious literature and the solicitation and collection of contributions have long been recognized as activities having the full protection of the First Amendment, and are clearly compatible with the purpose of the State Fair. There is no governmental interest that justifies their curtailment at the Fair.

The booth rule is hardly a reasonable regulation of the place and manner in which the distribution of religious literature and the solicitation of contributions can be pursued. Rather, it is in its effect an unconstitutional abridgement of these First Amendment activities because it greatly diminishes the amount, opportunities for and effectiveness of such activities, and

substantially increases their cost. Since the rule amounts to a prohibition, it is unconstitutional.

Even if viewed as a regulation of the place in which the distribution of literature and solicitation of contributions may be conducted (so as to invoke a balancing test) the record shows that the speculative impact of these activities on the four interests the state allegedly seeks to advance through their curtailment is not supported by any evidence. Furthermore, those interests are grossly overstated or impermissible. The maintenance of order and safety is not jeopardized by roving solicitors; the protection of fairgoers from unwanted communications is not a legitimate state concern and is an infringement on the rights of fairgoers to receive communications; the rights of other

exhibitors are not undercut by recognizing that First Amendment activities are exempt from the booth rule; and the prevention of fraud and deceptive conduct -- in fact, the prevention of all these problems -- is more efficiently and directly accomplished by means less restrictive of First Amendment freedoms.

The booth rule severely injures ISKCON and groups similarly situated. Contributions from non-members are their lifeblood; and the State Fair offers an unequalled opportunity to contact and solicit a large number of people who are in an ideal frame of mind to purchase their literature and make contributions -- if itinerant solicitations were permitted. On balance, the harm sustained by such groups far outweighs whatever administrative convenience is achieved by this overbroad rule.

I. THE BOOTH RULE SEVERELY ABRIDGES THE EXERCISE OF FIRST AMENDMENT RIGHTS IN AN IMPERMISSIBLE MANNER.

A. The Distribution And Sale Of Religious Literature And The Solicitation And Acceptance Of Contributions Are Protected By The First Amendment.

The booth rule, Minnesota State Fair Rule 6.05, is clearly unconstitutional as applied to prohibit the itinerant sale and distribution of literature and the solicitation of contributions by ISKCON and other religious and political groups at the Minnesota State Fair (hereinafter "the Fair"). The booth rule may also be facially unconstitutional, but amicus herein challenges only its application to non-commercial groups and their protected activties.

Although there is no dispute that Sankirtan is a bona fide religious ritual of the Krishna Consciousness branch of the

Hindu religion,[1] this Court's decision need not turn on that narrow ground. Nor does amicus argue that ISCKON members should receive a preferential exemption from the booth rule solely because the distribution and sale of literature and the solicitation of contributions may be requirements of Sankirtan. Instead, we urge that this Court apply its long-standing and unequivocal holdings that any religious or political organization possesses, as an indivisible concomitant of its right to advocate its views under the protection of the First Amendment, the right to distribute and sell literature settling forth its beliefs and to solicit

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1 Stipulation of Facts, J.A. 31. Also, other courts have uniformly so held. See, e.g., Edwards v. Maryland State Fair, 628 F.2d 282, 284 (4 Cir. 1980); ISKCON v. Bowen, 600 F.2d 667, 669 (7th Cir. 1979); ISKCON v. State Fair of Texas, 461 F. Supp. 719, 723 (N.D. Tex. 1978); United States v. Silberman, 464 F. Supp. 866, 870 (M.D. Fla. 1979); ISKCON v. City of New Orleans, 347 F. Supp. 945, 947 (E.D. La. 1972).

and receive financial support for its maintenance and the propagation of those beliefs.

This Court has clearly held that the distribution of literature is protected by the First Amendment, Schneider v. State, 308 U.S. 147, 162-164 (1939); Lovell v. City of Griffin, 303 U.S. 444 (1938); Jamison v. Texas, 318 U.S. 413, 416 (1943), and that the solicitation of contributions is also protected by the First Amendment, Cantwell v. Connecticut, 310 U.S. 296 (1940); Village of Schaumberg v. Citizens for a Better Environment, 444 U.S. 620 (1980).

Common sense compels these holdings. Oral advocacy without the simultaneous distribution of supporting literature is frequently so incomplete or ineffective as to render the right of free expression a virtual nullity. A political action organization, for example, must have the right to distribute the voting records of incumbent candidates, because those facts can never

adequately be conveyed or retained by oral communication alone. A political candidate's most effective communication may well be a flyer featuring photographs of himself and his family. A right-to-life group may most persuasively make its point with pamphlets showing aborted fetuses. And a religion like Krishna Consciousness, based on teachings and principles quite foreign to Western ears, cannot be expected to communicate its message accurately or effectively without the distribution of literature, much of it in the lengthy book format necessary to encompass the broad scope and intense depth of the religion.[2] Murdock v. Pennsylvania, 319 U.S. 105, 108-9 (1943):

> The hand distribution of religious tracts is an age old form of missionary evangelism -- as old as the history of

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2 The principal Vedic scriptures include Upanishads; Mahabharata; Bhagavad-Gita; Vedanta-sutra; Srimad Bhagaratam; and Sri-Caitanya-Caritamatra, (J.A.-13).

> printing presses. It has been a potent force in various religious movements down through the years. It is more than preaching; it is more than distribution of religious literature. It is a combination of both. Its purpose is as evangelical as the revival meeting. This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits. It has the same claim to protection as the more the more orthodox and conventional exercises of religion. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press. (footnotes omitted)

In addition to distributing religious literature to fairgoers, it has been stipulated that ISKCON devotees desire to solicit contributions and/or sell such literature (J.A. 33), but this in no way undercuts the claim to full First Amendment protection. ISKCON can not be required to give away literature without charge as the price for preserving its First Amendment rights. Murdock v. Pennsylvania, 319 U.S. at 111:

> But the mere fact that the religious literature is "sold" by itinerant preachers rather than "donated" does not transform evangelism into a commercial enterprise...The constitutional

rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books... It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that a religious organization needs funds to remain a going concern. But an itinerant evangelist...does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him. Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way.

B. The State Fair Is A Public Forum, And Speech And Solicitation Activities Are Compatible With Its Purpose.

Petitioners improperly conclude that the Fair is a much less suitable forum than streets and parks for the communication of ideas. Petitioners' Brief (hereinafter P.B.) 22-23. Amicus contends that the Fair is an ideal forum for such communication, even more so in many respects than some streets and parks.

This Court has often indicated that a preliminary question is "whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." Grayned v. City of Rockford, 408 U.S. 104, 116 (1972). Thus, expressive activity can be restricted only if it materially disrupts the purpose of the forum or involves substantial disorder or invasion of the rights of others. Tinker v. Des Moines Independent Community School

District, 393 U.S. 503, 513 (1969). The nature of a place, "the pattern of its normal activities, dictates the kind of regulations of time, place, and manner that are reasonable." Wright, The Constitution on the Campus, 22 Vand. L. Rev. 1027, 1042 (1969). Cf. Cox v. Louisiana, 379 U.S. 536 (1965); Adderley v. Florida, 385 U.S. 39 (1966); Amalgamated Food Employees v. Logan Valley Plaza, Inc., 391 U.S. 308 (1968); Greer v. Spock, 424 U.S. 828 (1976).

The First Amendment activities here at issue are as fully compatible with the nature and purpose of state fairs as they are with the purpose of streets and parks -- and possibly even more compatible.

One of the most thoughtful judicial analyses of "the primary uses of streets and parks," undertaken in an attempt to "reconcile the interest in allowing free expression of ideas in public places with the protection of public peace," is contained in Justice

Frankfurter's concurring opinion in Niemotko v. Maryland, 340 U.S. 268, 273-289 (1951). Frankfurter concluded that the primary purpose of streets was for "passenger and vehicular traffic," 340 U.S. at 282,[3] and that parks served "the recreational, esthetic and contemplative needs of a community," id. at 283. Arguably, those primary purposes of parks and streets could, under some circumstances, be deemed less than fully compatible with speech-making, proselytizing, distribution of literature, and solicitation of contributions; yet, "time out of mind, [parks and streets] have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." Hague v. CIO, 307 U.S. 496, 575 (1939).

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[3] Cf. Schneider v. State, 308 U.S. 147, 160 (1939) ("movement of people and property, the primary purpose to which streets are dedicated").

Fairs are even more compatible with First Amendment activity. The primary use of a fairgrounds is neither for travel nor relaxation of the contemplative, pastoral sort one seeks in a park, but to host an annual, statewide marketplace and exhibition for the enlightenment and entertainment of the public. A fair is a marketplace for agricultural produce, souvenirs, handicrafts, amusements and also ideas, an exhibition where livestock and needlework can peacefully co-exist with political candidates and religious literature. It is -- and is understood by those who attend to be -- a once-a-year opportunity to escape from one's routine, sample unfamiliar foods and ideas, meet people and see things one would not otherwise encounter, and be confronted with concepts -- whether agricultural, technological,

political, educational or religious -- which one would also not likely otherwise encounter.

> A fair is almost by definition a congeries of hawkers, vendors of wares and services, and purveyors of ideas, commercial, esthetic and intellectual.

ISKCON v. State Fair of Texas, 461 F. Supp. 719, 721 (N.D. Texas 1978). A fair is thus an emminently suitable public forum for the activities here at issue.

Also, one goes to a fair, as petitioners have acknowledged, intending to linger for a large part of the day, (P.B. 21). A fairgoer is not rushing to catch a plane, as at an airport, or late for work, or concentrating on traffic as one is on city streets. Nor does one go to a fair expecting peace and solitude as one might at a park. A fairgoer is uniquely receptive, if not to the particular message preached by a devotee of ISKCON or other First Amendment groups, at least to being approached by them. (J.A. 11). Their attempt to com-

municate their views and sell their literature are neither a serious intrusion on the fairgoer's time, an invasion of his home, an impediment to his travel, or a threat to his safety, nor are they perceived as such by the average fairgoer. Ewert Affdt., J.A. 42.

Since their inception, fairs have been regarded and functioned as ideal places for the interchange of ideas as well as merchandise. The ancient Greeks and Romans used the days of fairs and markets to announce new public laws. In early Christian times fairs were frequently attached to religious gatherings, especially those of pilgrims coming to a town to celebrate a special feast. The great fairs of Europe -- Geneva, Antwerp, Leipzig, Madrid, Lyons, Bordeaux, Novgorod -- served as effective conduits for both goods and ideas from distant lands as well as between the nations of the Continent. In the 17th century, trade fairs to a large extent were replaced by pleasure fairs which

were dominated by entertainments often conveying ideas through the medium of plays. See Helen Augur, The Book of Fairs (1939); William Addison, English Fairs and Markets (1953); Sybil Rosenfeld, The Theater of the London Fairs in the 18th Century (1960); "Fairs", The Columbia Encyclopedia (3d Ed. 1963).

Thus, the attempt by means of the booth rule to prohibit the full communication of ideas in the mainstream of the fair deprives fairgoers of their constitutional right to hear, read, judge, and support various philosophies, and removes from the fair what has historically been one of its most important functions.

C. The Booth Rule Is, In Effect, An Unconstitutional Prohibition On The Meaningful Exercise Of First Amendment Rights.

Petitioners argue that they have not denied ISKCON or other groups access to the fairgoers, but have merely required that solicitations and sales of literature be made from booths. The Fair terms this a "regulation" rather than a "prohibition", but -- and this is the heart of the matter -- when a regulation of time, place, or manner severely curtails the effective exercise of First Amendment rights, that regulation becomes tantamount to a prohibition. "Free expression 'must not, in the guise of regulation, be abridged or denied'." Grayned v. City of Rockford, 408 U.S. 104, 117, quoting Hague v. CIO, 307 U.S. at 516.

Regulations, for example, which would permit literature sales on village streets

only between midnight and 4:00 a.m., or which would confine religious solicitations to the warehouse district of a city, or forbid oral advocacy above a whisper, although ostensibly only "regulations" of time, place, or manner, would surely be struck down as the equivalent of prohibitions because they obviously deprive the speaker of meaningful access to the vast majority of the populace. The booth rule so drastically reduces the opportunity for and the effectiveness of First Amendment activity that it amounts to a de facto prohibition on such activity and, hence, is constitutionally impermissible:

> Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots.

Tinker, supra, 393 U.S. at 513.

As one of the federal courts which

carefully studied the impact of a similar booth rule on the solicitation activities of the Krishnas and Sankirtan observed:

> It involves a one-to-one exchange. It cannot be exercised from a 30-foot booth with any degree of effectiveness -- not when the fair grounds sprawl over approximately 250 acres.

ISKCON v. State Fair of Texas, 461 F. Supp. 719, 723 (N.D. Texas 1978).

The booth rule seriously diminishes the effectiveness of solicitations and the ability to perform Sankirtan in the following ways:

First, under the most ideal conditions, only a minute percentage of the fairgoers could be accommodated at an ISKCON booth, Beca Affdt. J.A. 12, and the expense of additional booths would be considerable. (On costs, see Exhibit to Affidavit to Michael Heffron, J.A. 49-52.)

Second, it is not realistic, given the natural diffidence of people when dealing with foreign cultures, to expect many fair-

goers to seek out the booth of ISKCON or any similarly unconventional organization.

Third, even when more than idly curious about a group like ISKCON, many individuals are reluctant to be seen to approach a booth and initiate contact for fear that neighbors, co-workers, or other observers will conclude that the individual "supports" or "believes in" that group. In contrast, when it is the group which initiates the approach, the curious individual has a reasonable "excuse" for maintaining the contact sufficiently long to satisfy his curiosity (or whet his appetite for more) but without appearing to observers to be anything other than polite.

Fourth, one can purchase a book or make a donation after being solicited by an itinerant devotee of a group like ISKCON without being perceived by others as a supporter of that group. Observers may assume the purchase or donation was made on a charitable impulse or to get rid of the solici-

tor; either motive will be respected and thus make it easier for the individual to contribute. But the act of approaching a booth to purchase a book or make a contribution cannot be similarly explained away, and potential contributors may refrain from so doing for fear of being stigmatized as supporters of such a group.[4]

The Court recognized these human tendencies in Lamont v. Postmaster General, 381 U.S. 301, 307 (1965) when it criticized the "deterrent effect" and inhibition caused by requiring one to whom communist political propaganda was addressed to take affirmative measures to receive it.

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4 It is obvious that the diminished opportunity for effective solicitation caused by factors 2, 3, and 4 is not operative in the commercial context; and for that reason the booth rule is not truly content-neutral in operation, having a far greater impact on groups like ISKCON than on more "establishment" groups or commercial vendors.

Fifth, people are often reluctant, even when curious, to make inquiries at a fair booth for fear that it will obligate them to make a purchase or contribution; they do not feel a similar obligation when the solicitor approaches them and are thus more likely to communicate openly and learn more about the beliefs of the solicitor's organization.

Sixth, and without getting into the complex issue of whether the Krishna Consciousness religion requires its devotees to perform the solicitation and book-distribution activities of Sankirtan peripapetically,[5] it is nevertheless obvious that the booth-bound method is inappropriate for a group like ISKCON because the method is

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5 Amicus believes that such inquiry is not necessary to invalidate the rule and that this case should not turn on whether ISKCON members have a "special claim" to an exemption from the booth rule.

(Footnote Continued)

inconsistent with the message, and such inconsistency may confuse or offend prospective converts and supporters. The message of an active, proselytizing religious sect

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5 (Footnote Continued)

What is at issue here, is not that the Krishnas should be allowed to solicit throughout the Fair because their religion requires it, but that they, and all others advocating religious or political positions, should be permitted to do so because they are entitled under the First Amendment to present their beliefs to the public in a meaningful way. It is unclear whether the Minnesota Supreme Court found the peripatetic requirement of Sankirtan essential to its decision, because that finding appears in a foot note, (J.A. 69); but it is clear that judicial inquiry into religious beliefs and motivation is constitutionally impermissible. United States v. Ballard, 322 U.S. 78 (1944). Inquiry into this "forbidden domain", id. at 82, would open the door to the undesirable prospect of having non-believers adjudicate the validity, scope and meaning of sacred doctrines, and unnecessarily subject this religious movement to the scornful, cynical, abusive and offensive characterizations contained in the amicus briefs submitted to this Court by the States of Ohio (pp. 18-22) and New York (pp. 18-27) and the County of Los Angeles (pp. 8-17).

which believes it has "a duty . . . to benedict everyone . . . with this sublime vision of Vedic knowledge that leads back to the Godhead," Beca Affdt. J.A. 20, is most appropriately conveyed in an active, direct manner, as by peripatetic devotees seeking out and contacting the unenlightened face-to-face, rather than in the diffident, less urgent manner conveyed by the use of a booth. See, e.g. K. Longman, Advertising, (New York: Harcourt Brace, 1971) p.206.

These considerations, although not capable of precise statistical measurements, are nevertheless real, operative, and far from fanciful. Each acts to a greater or lesser degree on every visitor to the Fair, and their net effect is to reduce drastically the number of fairgoers to whom ISKCON is able to convey its message and obtain financial support when its activities are confined to a booth. That drastic reduction

in actual -- as opposed to theoretical -- access amounts to a virtual prohibition.

It is apparently such drastic curtailment in access resulting from an otherwise permissible place regulation that was condemned in Young v. American Mini Theatres, 427 U.S. 50, 71 n.35 (1976). In the course of upholding an ordinance which regulated the location of adult theatres, the Court observed that "(t)he situation would be quite different if the ordinance had the effect of suppressing, or greatly restricting access to, lawful speech."

The regulation permitting proselytizing throughout the Fair but forbidding the transfer of money anywhere except at booths is also a virtual prohibition on effective solicitation because it is wholly unrealistic to expect a fairgoer to walk very far or battle the crowds to reach the ISKCON booth to make a donation or pay for a religious book. Many of these donations are made on

brief impulse. The enforced delay might have permissibly beneficial results in avoiding ill-conceived purchases of pots and pans and home freezers from door-to-door salesmen, but the state cannot require a "cooling off" period before a listener may respond to political or religious speech.

The Court has said it would uphold only that general regulation of religious solicitation which "does not unreasonably obstruct or delay the collection of funds," Cantwell, supra, 310 U.S. at 305. The obstruction and delay caused by the Minnesota booth rule are obvious. Such barriers to effective solicitation amount to a denial of the right to solicit, and a denial of that right is, for a group like ISKCON, a sentence to oblivion.

This Court has recognized that when an ordinance, although purportedly only regulating the time, place or manner of a communication, does so in a way which severely reduces the effectiveness of that communication or

greatly burdens its presentation, the regulation is tantamount to a prohibition and hence constitutionally impermissible, Linmark Associates, Inc. v. Township of Willingboro, 431 U.S. 85 (1977).

In Linmark, the township had passed an ordinance forbidding homeowners to post "For Sale" signs on their property, and it argued that this regulation did not directly implicate First Amendment concerns because it restricted only one method of communication. This Court held that serious questions existed whether the ordinance "leave[s] open ample alternative channels for communication." The Court noted that although in theory sellers of homes remained free to employ different alternatives, in actual practice the options to which they were relegated "involve more cost and less autonomy" than For Sale signs, "are less likely to reach persons not deliberately seeking sales information," "and may be less effective

media for communicating the message." Linmark, supra, 431 U.S. at 93. The Court concluded that "(t)he alternatives, then, are far from satisfactory," id. and went on to strike down the ordinance.[6]

Similar considerations are clearly present in the instant action. Petitioners contend that, although ISKCON is not permitted to distribute or sell literature or solicit or accept contributions throughout the fairgrounds, it has the alternative of undertaking these activities from a fixed booth. We have shown, supra, that such alternative is "far from satisfactory," being burdensome, inappropriate, ineffective and relatively unproductive. The fixed booth method clearly involves "more cost and less autonomy" for ISKCON than the use of roving solicitors.

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6 The Court also observed that the township was not "acting to restrict a mode of communication that intrudes

(Footnote Continued)

The fixed booth is obviously "less likely to reach persons not deliberately seeking [Krishna] information." And the fixed booth also "may be less effective media for communicating the message".

If the Court agrees that the booth rule, in its effect, amounts to a prohibition of First Amendment activities as applied to ISKCON and similar, non-commercial groups, the Court must exempt them from its restrictions. Only if the Court regards the booth rule as a regulation, rather than a prohibition, need it proceed to weigh and balance the competing interests, infra, Point III.

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6 (Footnote Continued)

on the privacy of the home...or otherwise reaches a group the township had a right to protect" from the communication. Nor had it been shown that the place or manner of the communication produced a detrimental "secondary effect" on society, id. at 94. All these considerations, which could possibly justify a restriction, are also absent here.

II. NONE OF THE FOUR INTERESTS ASSERTED TO JUSTIFY THE BOOTH RULE IS SIGNIFICANTLY IMPLICATED BY THE ACTIVITIES OF ISKCON, AND EACH COULD BE SATISFIED BY LESS RESTRICTIVE MEANS.

Although amicus does not concede that the booth rule is content neutral or anything less than a prohibition as applied to ISKCON, if the Court disagrees and decides it appropriate to balance the interests involved, amicus accepts Petitioners' contention (P.B.15) that:

> (t)he balancing test required in non-content speech and free exercise cases is a weighing of the harm suffered by those whose speech or religious conduct is restricted against the governmental purposes served by the regulation.

Amicus has shown, Point I C, supra, and will demonstrate, Point III, infra, that the harm suffered by ISKCON from the booth rule is severe, far more so than can be justified by the state purposes allegedly served by it.

Amicus will accept, for purposes of this litigation, Petitioners' position regarding the appropriate standard of judicial review; Petitioners acknowledge that the governmental

> purposes must be 'substantial', 'significant', 'important', or 'compelling'. See Virginia State Board of Pharmacy v. Virginia Citizen Consumer Councel, 425 U.S. 748, 771 (1976); Grayned v. Rockford, supra, 408 U.S. at 115; United States v. O'Brien, 391 U.S. 367, 376-77 (1968); Lehman v. Shaker Heights, supra, 418 U.S. at 303. (P.B. 15.)

Amicus contends, and will demonstrate below, that the state interests actually served by the booth rule fail to meet any of these standards.

Furthermore, the booth rule is broader in scope and more restrictive of protected communication than is required to serve any of the asserted state interests. The State

> may serve its legitimate interests, but it must do so by narrowly drawn regulations designed to serve those

> interests without unnecessarily interfering with First Amendment freedoms.

Village of Schaumburg, 444 U.S. at 637.

> Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone.

NAACP v. Button, 371 U.S. 415, 438 (1963).

Where communication is infringed, "the regulation must be narrowly tailored to further the State's legitimate interest." Grayned, supra, at 116-117.

A. Maintenance of Order and Safety -- Is Not Jeopardized by ISKCON Solicitors.

The state's contention that the booth rule is required to effectuate its legitimate interest in crowd control and public safety is speculative and unpersuasive, Heffron Affdts., J.A. at 28 and 48, and nothing in the record indicates that the activities of ISKCON members have resulted or are likely to result in congestion or a threat to the public order. Also, notning in the reported experience of the Texas or Maryland State Fairs, where the application of the booth rule to ISKCON has been judicially enjoined, gives evidence of any increased congestion or disorder resulting therefrom. See, e.g., Dallas Morning News, Oct. 1-20, 1979 and Oct. 1-16, 1980; Baltimore Sun, Aug. 20 - Sept. 8, 1980.

Petitioners ask this Court to believe that the presence of several dozen itinerant solicitors from various organizations would intolerably or dangerously increase the congestion in a 45-acre area which already accommodates more than 115,000 fairgoers daily. (J.A. 35.) In view of the slow pace at which people travel in such congested surroundings, the Court cannot assume that the book-selling or change-making activities of ISKCON members would be incompatible with pedestrian movement or inimical to the public safety.

Since the Fair officials have stipulated that they permit itinerant oral proselytizers, it is difficult to comprehend what state interests in order and safety are served by the ban on the itinerant sale and distribution of literature and the acceptance of donations, because it is

difficult to imagine much increased disruption resulting therefrom. The Supreme Court of Minnesota, after a thorough examination of the record, found that

> We are not convinced that allowing ISKCON members to also distribute religious literature and accept money throughout public areas of the fairgrounds would cause additional disruption sufficient to justify confining those activities to a booth.

ISKCON v. Heffron, J.A. 64-65. And even the dissenters agreed that:

> There is no basis in the record for distinguishing the effect of proselytism from that of solicitation and distribution of religious literature on the claimed governmental interests involved herein . . . It would appear that the acts of solicitation and distribution have no greater impact on the public order than does the act of proselytism. Id., J.A. 70.

The Fourth and Seventh Circuits have rejected the congestion argument in very similar circumstances, Edwards v. Maryland State Fair, 628 F.2d 282, 286 (4th Cir. 1980); ISKCON v. Bowen, 600 F.2d 667, 669

(7th Cir.), cert. denied, 444 U.S. 963 (1979), as has the Supreme Court of Colorado, ISKCON v. Colorado State Fair, 610 P.2d 486, 489 (1980) (en banc). To our knowledge, no court considering a fair's booth rule has found the congestion argument dispositive.[7]

Since there is no evidence that activity of the kind proposed by respondents would measurably affect pedestrian congestion at the Fair, there is no basis for confining

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7 Confinement of solicitations to booths or fixed locations have been upheld on congestion rationale (although amicus does not concede their validity) in cases involving places like airports, ISKCON v. Eaves, 601 F.2d 809 (5th Cir. 1979), and the Word Trade Center, ISKCON v. McAvey, 450 F. Supp. 1265 (S.D.N.Y. 1978), but as the Minnesota Supreme Court correctly observed in refusing to confine ISKCON's solicitation to a booth, "(t)he state fair is not equivalent in character to the World Trade Center. Nor is it equivalent to an airport." J.A. 10.

it to a booth. The booth rule cannot be justified by speculation. "[U]ndifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." Tinker, supra, 393 U.S. at 508.

Furthermore, "(t)idiness and tranquility are not qualities ordinarily found at fairs, nor are they qualities enshrined in the First Amendment." Edwards, supra, 628 F.2d at 286.

This case involves only a few dozen devotees of a peaceful religious movement (J.A. 14-18, 23, 41) who seek to walk about and to distribute religious literature and solicit contributions. It is stipulated that the Krishnas do not propose to chant, dance or sing outside their booth or engage in any "disruptive or disorderly conduct." Stipulation of Facts, J.A. 33-34. The Fair is not confronted here with any activities

this Court has ever held sufficiently disruptive of public order or safety to justify abridgement.[8]

The proper way for the Fair to protect public order and safety is to direct its regulation at the act of obstruction itself, eliminate instances of congestion or disorder as they arise, and prosecute those who cause them.

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8 The solicitation and booth distribution activities of ISKCON do not interfere with or obstruct the administration of justice, Cox v. Louisiana, 379 U.S. 559 (1965); or prevent ingress to or egress from a courthouse or its equivalent, Cameron v. Johnson, 390 U.S. 611 (1968); nor are they likely to "inflict injury or tend to incite an immediate breach of the peace," Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942). Nor are we dealing with large, organized formations of people creating possible safety problems on a public highway, Cox v. New Hampshire, 312 U.S. 569 (1941).

B. Protecting Fairgoers from Unwanted Communications -- Is Not A Constitutionally Cognizable State Concern.

Petitioners express a paternalistic though doubtlessly sincere desire to shield fairgoers from contact with ideas and communications they do not seek and may not regard with favor. But the Fair has no power to shield its visitors from consitutionally protected advocacy, even if it is upsetting or unwanted. Moreover, citizens can claim no privacy or other right which entitles them to be free from being approached in public places. See Village of Schaumburg, supra, 444 U.S. at 638-39. In fact, citizens have an absolute right to have all ideas communicated to them so that they may judge their merits.

> The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom

> which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance. This freedom embraces the right to distribute literature, Lovell v. Griffin, 303 U.S. 444, 452, and necessarily protects the right to receive it. (Footnote omitted.)

Martin v. Struthers, 319 U.S. at 143.

The individual has the right to determine whether he is willing to receive the message, and any regulation or ordinance which endeavors to substitute the judgment of the community for that of the individual is invalid, id. at 144.

The recognized exceptions, none of which are applicable here, occur when the speaker attempts to invade the sanctity of the home against the expressed wish of the resident, e.g., Rowan v. United States Post Office Department, 397 U.S. 728, 738 (1970), or where the hearer is part of a captive audience, e.g., Lehman v. City of Shaker Heights, 418 U.S. 298 (1974) (passengers

on city buses). In an area as open as a street, park or state fair, there is no captive audience, for the unwilling listener is clearly capable of ignoring the speaker and continuing on his way.[9] "The crowds are not captive but move freely to those places and booths they choose." ISKCON v. State Fair, 461 F. Supp. at 721.

Expectations of privacy at a fair are slight at best since they run counter to the very nature of a fair. Furthermore, whatever intrusion on such interests is experienced by an unwanted solicitation, it surely does not rise to the level of the

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9 Arguably, should this be insufficient for very sensitive individuals or those who feel harrassed by repeated solicitations, they could wear a button or paste-on badge saying "No Solicitation," and violators of such request could conceivably be punished, per this Court's suggestion in Martin v. Struthers, 319 U.S. at 147-149.

"essentially intolerable" invasion which this Court deemed requisite to enable a government to "shut off discourse solely to protect others from hearing it." Cohen v. California, 403 U.S. 15, 21 (1971).

> Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. The dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas.

Martin v. Struthers, 319 U.S. at 146-147.

In Farmer v. Moses, 232 F. Supp. 154, 162 (S.D.N.Y. 1964), the court considered the privacy rights of visitors to the New York World's Fair and concluded:

> [T]hose of us who pay the regular admission fee and attend the Fair cannot be totally insulated from our

> fellows, nor can we expect to be shielded from expressions or ideas which are unanticipated and unsolicited. An individual's right of privacy is of practical necessity limited by the rights of others when he leaves his home and ventures forth into public areas, even those which he must pay to enter.

The rule that the State must not interfere with the communication of unwanted ideas is profoundly important because many of the principles most cherished by the majority of Americans today -- the freedom from the control of foreign kings preached by Tom Paine, the end of slavery demanded by the abolitionists, the right of women to vote, America's emergence from isolationism to world leadership, Social Security, and even freedom of speech and religion -- were at their inception largely unwanted communications and unsettling ideas which initially found few willing listeners and which, had their advocates been confined to the

back booths instead of being permitted vigorously and aggressively to seek out supporters, might never have endured to bestow their benefits upon us.

C. The Rights Of Other Exhibitors -- Are Not Undercut By Barring Application Of The Booth Rule To First Amendment Groups.

Petitioner's concern with protecting the rights of "competing" exhibitors and concessionaires (P.B. 18-21) by forbidding itinerant solicitation is speculative, overstated, and not supported by any evidence. If this Court enjoins the application of the booth rule to ISKCON, then all groups similarly situated will have the right to solicit peripatetically, and none of them will be placed at a "competitive" disadvantage. On the other hand, many such groups will not necessarily avail themselves of the right,[10] thus eliminating

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10 Some may refrain because they prefer the "prestige" and propriety of a fixed booth, others because their message or mission is such that those fairgoers favorably disposed to receive it will

(Footnote continued)

the spectre of hundreds of shouting solicitors simultaneously competing for the ear and purse of the same fairgoer.

The groups which elect not to engage in peripatetic advocacy will not be placed in an inferior competitive position by permitting ISKCON to do so, as the Fair claims, for the hungry mind is uniquely capable of accommodating both a large and varied intellectual diet. The fact that a fairgoer has received a copy of Back to Godhead magazine from a peripatetic Krishna will not preclude him from accepting, reading, and possibly being persuaded by an evangelical tract from the Minnesota Conference of Seventh Day Adventists, the Twin Cities Baptist Messianic Witness, the Lutheran

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10 (Footnote Continued)

seek them out, others because they traditionally do not seek donations or converts.

Colportage Service, or other groups represented at the Fair (List of Exhibitors, J.A. 49-52). But if groups which seek donations find the amounts have dropped because an itinerant Krishna devotee got there first, those groups have the right to use similar itinerant solicitations.

It is not even arguably likely that an encounter with a roving Krishna or member of any other group enjoying full First Amendment rights will prevent a fairgoer from giving his full due to the commercial exhibitors and concessionaires at the Fair or from visiting the "agriculture, horticulture, stockbreeding, manufacturers, and the mining, mechanical and industrial arts and sciences," the Fair promotes, Minn. Stat. § 37.15 (1980).

Should any itinerant proselytizers prove a problem in blocking access to an

exhibitor's booth, the Fair could easily enact a rule prohibiting solicitation which interferes with such access, a rule far less restrictive of First Amendment rights and narrowly drawn to protect the legitimate interests involved.

D. Prevention Of Fraud And Deceptive Conduct -- Is Best Accomplished By Criminal Prosecutions, Not By Severe Restraints On First Amendment Activity.

Out of a total of 1,320,000 Minnesota State Fair attendees in 1979, Petitioners, despite extensive attempts (Affidavits of Beca, J.A. 38, Kerr, 80, and Ewert, 43), were able to obtain only four signed affidavits from people complaining about the activities of ISKCON members (J.A. 53-58), and only one of those, that of Michael Gene Krogness (J.A. 53), arguably approaches a

misrepresentation claim.[11]

At most, the complaints obtained by Petitioners indicate some over-zealous solicitation and impolite conduct and perhaps one instance of possible misrepresentation by an ISKCON member -- the remedy for which is the punishment of those directly involved, not condemnation of an entire religious movement.

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11 The alleged "experiences" of the amicus states are not part of the record in the instant action, concern totally different individuals, and, in any event, are subject to the same infirmities as the Minnesota complaints, revealing more a series of misunderstandings and faulty communications than intentional frauds (as when a fairgoer assumed that literature was being offered to him without charge and a contribution was subsequently sought). They fall far short of meeting the beyond-a-reasonable-doubt standard required to prove a crime, and are more than vaguely reminiscent of similar allegations lodged against the Jehovah's Witnesses and other anti-establishment groups in years past.

Petitioners' attempt to prevent fraud by the outright prohibition on itinerant solicitation contained in the booth rule offends the Constitution in several ways:

1) It punishes law-abiding members of ISKCON for the alleged unlawful activities of a few, an impermissible form of guilt by association, even if the allegations were proven true. As the Fifth Circuit held in condemning an airport regulation which would revoke the solicitation permit of any organization if three or more of its members were convicted of violating the airport regulation;

> the . . . restriction on organization merely conjoins . . . [a prior restraint] with one of guilt by association; sinners, apparently, flock together. This generalization is, at best, equally weak. It cannot support a prior restraint either. The penalty provision is unconstitutional.

ISKCON v. Eaves, 601 F.2d at 833.

And, as Judge Higginbotham held in ISKCON v. State Fair of Texas, 461 F. Supp. at 723, the fair's

> legitimate concern with preventing fraud and theft cannot justify a rule which prohibits all devotees from practicing Sankirtan in a public forum.

2) It presumes that a few isolated instances of misconduct permit the state to infer that a pervasive and predictable pattern of conduct has been proven, one which gives Petitioners the right to punish or restrain behavior prior to its occurrence.

> The ordinances operate as a prior restraint on the exercise of speech, restraining its exercise in advance of its invocation based upon the finding that the speech engaged in will be fraudulent.

ISKCON v. Kearnes, 454, F. Supp. 116, 119 (E.D. Cal. 1978).

> [W]e do not think that the ease of administrating the 'booth rule' and the avoidance of future litigation are considerations which save the rule. The law seems certain that considerations of this sort may not be permitted to

> invade the proper exercise of a First Amendment right.

ISKCON v. Bowen, 600 F.2d at 669-70.

3) It unconstitutionally deprives all groups at the Fair of their First Amendment rights, including organizations against whom no charge of fraudulent conduct has ever been made. Particular instances of misconduct cannot serve as the basis for a regulation which would abridge the First Amendment rights of all. Near v. Minnesota, 283 U.S. 697, 720 (1931); Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 558-59 (1975).

4) It impermissibly makes the loss of First Amendment rights the punishment for criminal activity.

> It has never been suggested that the deprivation of first amendment rights may be used as a punishment for an offense . . .

ISKCON v. Eaves, 601 F.2d at 833 n.28

5) And the booth rule is far broader than necessary to curtail fraud. The proper method is criminal prosecution after the fraud takes place. "Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly". Village of Schaumberg, supra, 444 U.S. at 637, Accord, e.g., Cantwell v. Connecticut, 310 U.S. 296, 306. Schneider v. New Jersey, 308 U.S. at 164. Petitioners condemn this as "simplistic and impractical" (P.B. 27), but it is the constitutional way in our democracy.[12]

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12 If identification is a problem in undertaking such prosecution, the Fair could arguably require an itinerant solicitor to wear a badge to "establish his identity and his authority to act for the cause which he purports to represent." Cantwell v. Connecticut, supra, 310 U.S. at 306;
(Footnote Continued)

As the Court declared in Schneider, supra, 308 U.S. at 164.

> Frauds may be denounced as offenses and punished by law. . . . If it is said that these means are less effective and convenient . . . the answer is that consideration of this sort do not empower municipality to abridge freedom of speech and press.

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12 (Footnote Continued)

Hynes v. Mayor of Oradell, 425 U.S. 610, 618-619 (1976), Martin v. Struthers, 319 U.S. at 148 n.14. But see Talley v. California, 362 U.S. 60 (1960). Since petitioners themselves contend that "[t]he booth rule was drafted to enhance the ability of fairgoers to become informed of the identity and purpose of all salespersons" (P.B. 25), they should not be unwilling to utilize a method which directly identifies the solicitor with a minimal infringement on First Amendment rights.

III. WHEN BALANCED AGAINST THE GOVERNMENTAL INTERESTS ALLEGEDLY SERVED BY THE RULE, THE EFFECT ON ISKCON'S CONSTITUTIONAL RIGHTS IS UNDULY SEVERE.

All but the most bountifully-endowed organized religions are dependent upon contributions for their survival. The newer, poorer, and less established the religion, the more keenly its survival depends on unfettered access to potential contributors, and the Hindu denomination of Krishna Consciousness is clearly in this position. (J.A. 10-11.) The power of the Fair officials to prevent or severely hamper the sale of Vedic literature and the solicitation or collection of contributions thus threatens "the very lifeblood and principal means of support of this religious movement." (J.A. 10-11, 24.) Accord, ISKCON v. State Fair of Texas, 461 F. Supp. at 723.

The Krishna Consciousness religion, in

addition to experiencing the financial and organizational problems attendant upon being newly established in this country, is totally dependent on its ability to solicit contributions from outsiders (i.e., non-believers) to a degree not experienced by almost any other religion. The converts to Krishna Consciousness foreswear material possessions and, upon becoming devotees, expend all their time and energy working for the movement and preaching and practicing Krishna Consciousness. (J.A. 32.) The devotees retain no regular sources of income outside the religion which they can draw upon to support their religion. In fact, it can accurately be said that the religion sustains its devotees rather than the reverse. (J.A. 21, 24.) Whereas most members of America's traditional religions hold jobs and earn incomes outside their

churches, and are consequently able to support their churches with contributions from those incomes -- making it unnecessary for most major religions to solicit contributions from the populace at large -- ISKCON must solicit from strangers and seek to win converts to stay alive.

The Minnesota State Fair provides an unequalled opportunity for potentially effective solicitation. In terms of numbers of visitors, there is no gathering or population center in Minnesota even remotely approaching it. During its 12-day duration the Fair attracts 1,320,000 people. (J.A. 35.) That is three times the population of Minneapolis, the state's largest city, and more people than the combined population of Minnesota's 19 largest cities. 1980 Census of Population and Housing (Preliminary), Bureau of the Census, U.S. Commerce Dept.

Accordingly, a mere handful of strategically placed solicitors would be able to approach many times more prospective contributors and potential converts at the Fair than they could anywhere else in the state with equal effort and expense. Restricting them to a booth would thus be an impermissible burden on First Amendment rights.

The right to solicit contributions and sell literature throughout the Fair is also vital to ISKCON because the Fair is

> the kind of forum where devotees may most readily perform Sankirtan, for people in the position of fairgoers are particularly receptive to receiving books and discussing Krishna Consciousness. This is because people in a recreational situation such as a day trip to the Fair have substantial time to spare that would not be available to them on a normal workday and because fairgoers are open to new ideas and different cultural or educational experiences. Beca Affdt., J.A. 11.

Given the relaxed, inquisitive,

unhurried and open mood of most fairgoers, they constitute ideal prospects for solicitations by organizations lacking Community Chest credentials, and it is essential that ISKCON and groups similarly situated have an effective opportunity to solicit them.

People on city streets are often too busy, at sporting events too preoccupied, and at home too wary of strangers and protective of their privacy to be open to solicitations by members of such groups. And the number of citizens found at the Fair is certainly too costly to reach by television or other forms of paid advertising. Thus state fairs serve such groups as truly ideal, unique, irreplaceable forums for the advocacy of beliefs, the distribution of literature, and the solicitation of financial support. In no other forum in the vast majority of our states can one

find such large concentrations of people open to approach by First Amendment groups as are found at state fairs.[13] To deny such groups meaningful access to state fairgoers may deny them a chance for survival. Itinerant solicitation at state fairs, like door-to-door solicitation in an earlier era, "is essential to the poorly-financed causes of little people." Martin v. Struthers, 319 U.S. at 146. And the alleged state interests in enforcing the booth rule against such groups must, in our democracy, be seen as miniscule in comparison.

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13 The total number of visitors to state fairs is huge. The Texas State Fair alone is visited by more than 3,000,000 people each year, ISCKON v. Texas, supra, 461 F. Supp. at 720, and the nation, annually holds more than 2,000 state, district and county fairs, "Fairs", Encyclopedia Brittanica (1970).

IV. CONCLUSION.

Because the operation of the booth rule prohibits or substantially curtails effective exercise of First Amendment rights; because in actual practice the booth rule advances no substantial state interests; and because the state interests implicated by the solicitation activities of religious and political groups can be met by less destructive means, the application of the booth rule to religious and political groups should be found unconstitutional, and the decision of the Minnesota Supreme Court should be affirmed.

Respectfully submitted,

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ALEXANDER L. STEVAS,
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IN THE

Supreme Court of the United States

October Term, 1980

MICHAEL HEFFRON, *et al.*,

Petitioners,

v.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC.,

Respondents.

On Writ of Certiorari to the Supreme Court of the State of Minnesota

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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The American Federation of Labor and Congress of Industrial Organizations, a federation of 104 national and international unions with a total membership of 13,500,000 working men and women, files this brief *amicus curiae*, with the consent of the parties as provided for in the Rules of this Court.

INTRODUCTION AND SUMMARY OF ARGUMENT

Minnesota seeks in this case to justify a ban upon the distribution of any form of "printed or written material" (A-7), whether for free or at a price, on any of the public thoroughfares of the state's fairgrounds. The state in addition asserts the right to prohibit on the same thoroughfares solicitation of contributions to any religious, political or charitable cause.

Predictably, Minnesota seeks to characterize its sweeping restriction of communicative activity as merely a "time, place and manner" regulation. Brief for Petitioners (here

inafter "Pet. Br.") at 9. For, says the state, oral communication which is not a solicitation of funds is permitted on the fair's streets, roads, and parks,[1] while stationary distribution of literature and solicitation is permitted those religious, political, charitable, and labor groups that successfully compete on a "first-served" basis (Pet. Br. at 5) for a rented booth.[2] And, petitioners argue that the interests in (a) equal access for fair participants; (b) preventing annoyance of fairgoers; (c) prevention of fraud; and (d) promotion of order and safety all serve to justify the "non-content oriented" (Pet. Br. at 14) restrictions imposed.

Even as here summarized, and more evocatively when read in their entirety, petitioners' arguments create an inescapable sense of *deja vu*. For, in the 1930's and 1940's numerous municipalities sought to invoke against another small and unpopular religious sect, the Jehovah's Witnesses, and against the fledging labor movement, laws with the same effect of curbing the ability to disseminate the group's message on the common passageways. And, as we show in part I, *infra*, in these seminal cases concerning the

[1] The state represents that it "does not intend to restrict plaintiffs from walking about the fairgrounds and discussing their political, religious or other views with fair patrons." A-28. It is not clear whether this concession encompasses the right to speak to groups of fairgoers, but we assume—given the great stress placed upon the need for free movement upon the fairground's streets—that it does not. Thus, the right to "proselytize" seems to be simply a declaration that conversations among fairgoers will not be censored.

[2] Three hundred to five hundred applicants for use of a booth are denied each year. Pet. Br. at 5-6. Individuals and groups seeking to engage in non-commercial communicative activity stand on the same footing with respect to booth rental as commercial vendors. *Id.* Thus, it is quite possible that a group seeking to distribute handbills on political, religious, or economic issues, or to solicit contributions for a religious, political or charitable cause will be foreclosed entirely from the fairgrounds. In particular, a group seeking to publicize a dispute or issue first arising after booth rentals are completed (which the record suggests can occur over six months before the fair opens (A-35)) would be prohibited from any distribution or solicitation whatever at the fair.

right of citizens to propagate their views upon matters religious, political and economic, the governmental bodies seeking to justify restrictions of various stripes upon distribution and solicitation activity relied upon precisely the *same* set of asserted governmental interests as Minnesota does here. Moreover, save for the fact that none sought to point directly to the possibility of renting a storefront or other fixed location as constituting an alternative opportunity for communication sufficient to displace the chance to approach in some manner individual citizens in public locations, the municipalities involved in that litigation made arguments based on the fungibility of modes and methods of communication similar to those here advanced. It was in those very cases that the "time, place, and manner" concept was stated. And this court's decisions leave no doubt whatever that a sweeping preclusion all distribution and solicitation activity from the public walkways, streets, and parks of a municipality is *not* properly characterized as a "time, place and manner" restriction at all, and is not saved by the governmental interests here asserted.

Therefore, as we discuss in part II, *infra*, the only issue which even arguably presents an open question is whether the fact that this case concerns streets, roads, and parks of a *state's fairgrounds* rather than streets, roads and parks of a permanently-established town business district fundamentally alters the applicable First Amendment analysis. The state fails entirely to address this question, assuming instead that the principles governing access to other *fora* apply. See Pet. Br. at 15. But the cases the state relies on indicate no ground for declaring that the public walkways of a state fairgrounds differ in any pertinent way from ordinary city sidewalks.

ARGUMENT

I. Prohibition of All Distribution and Solicitation Activity on All Streets, Roads and Parks of A Town Violates the First Amendment.

1. No sophisticated analysis is necessary to establish that the activities in which respondents in this case wish to engage could not be entirely forbidden upon a munici-

pality's streets, roads, and parks. Rather, this Court unambiguously so established in cases decided thirty to forty years ago regarding the right to use the public streets and parks for communicating with the public.

First, with regard to the right to distribute literature, this Court unequivocally stated:

> [O]ne who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. *This right extends to the communication of ideas by handbills and literature as well as by the spoken word. Hague* v. *CIO*, 307 U.S. 496; *Schneider* v. *Irvington*, 308 U.S. 147, 162. . . . *Lovell* v. *Griffin*, 303 U.S. 444. [*Jamison* v. *Texas*, 318 U.S. 413, 416 (emphasis supplied).]

Thus, the fact that Minnesota is not attempting to forbid any form of oral proselytizing is entirely beside the point; the ordinances involved in *Lovell* (303 U.S. at 667), *Schneider* (308 U.S. at 154, 155, 156) and *Jamison* (318 U.S. at 671) were similarly limited to distribution of printed material.[3] Nor may the right to use the streets be eradicated because private and public locations other than streets are available. The Court expressly rejected in *Schneider* this suggestion when it was advanced to distinguish the prohibition in *Lovell* upon any distribution "within the limits of the City of Griffin":

> It is suggested that the Los Angeles and Worcester

---

[3] See also *Lovell*, 303 U.S. at 452, finding the source of the right to distribute literature in the separate protection of freedom of the press:

> The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion . . . [nor can t]he ordinance be saved because it relates to distribution and not to publication, "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value," *Ex Parte Jackson*, 96 U.S. 727, 733.

Cf. Martin v. *City of Struthers*, 319 U.S. 141, 142; (*id.* at 15) (Murphy, J., concurring) (ban on house-to-house distribution of literature invalid although oral canvassing proselytizing is permitted.)

> ordinances are valid because their operation is limited to streets and alleys and leaves persons free to distribute printed matter in other public places. But, as we have said, the streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty or expression in appropriate places abridged on the plea that it may be exercised in some other place. [*Schneider, supra,* 308 U.S. at 163.]

Although Minnesota advances no such distinction directly, since its ban applies equally to free distribution and to sales of religious, political, or economic tracts it is noteworthy in light of the interests Minnesota does advance in support of its rule that the right to distribute such printed material is not eradicated because the material is sold rather than given away:

> But the mere fact that the religious literature is "sold" by itinerant preachers rather than "donated" does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. . . . Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way. [*Murdock* v. *Pennsylvania,* 319 U.S. 105, 111; see also *Jamison, supra,* 318 U.S. 413, 415-416; *Schneider, supra,* 308 U.S. at 154, 162, 163.]

Second, similarly protected under the First Amendment is the right to use the city streets to solicit from passersby contributions for a religious, charitable, or political cause. This Court recently reviewed the cases so holding (*Schneider, supra; Cantwell* v. *Connecticut,* 310 U.S. 296; *Jamison, supra; Largent* v. *Texas,* 318 U.S. 418; and *Murdock, supra*), summarizing them as follows:

> Prior authorities, therefore, clearly establish that charitable appeals for funds, on the street or door to door, involves a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment.

[*Village of Schaumberg* v. *Citizens*, 444 U.S. 620, 632.][4]

The very term "solicit," of course, connotes approaching others rather than awaiting their expression of interest, and the cases expressly so recognize. *Murdock, supra,* 319 U.S. at 108-109; *Cantwell, supra,* 310 U.S. at 902. And the Court has as well addressed and rejected the view that a ban upon solicitation in part rather than all of a city is valid. *Murdock,* 319 U.S. at 117.

Third, the cases establishing the general right to distribute literature and to solicit contributions on town streets also state the "time, place and manner" concept. *Lovell, supra,* 303 U.S. at 451; *Hague, supra,* 307 U.S. at 516; *Schneider, supra,* 308 U.S. at 160-61; *Cantwell, supra,* 310 U.S. at 304, 306-07; *Jamison, supra,* 318 U.S. at 416; *Martin, supra,* 319 U.S. at 143; *Murdock, supra,* 319 U.S. at 116. From that fact alone, one could surmise that the Court did not intend regulation in pursuit of "the general comfort and convenience and peace and good order" (*Hague, supra,* 307 U.S. at 516) to eliminate entirely the rights recognized. Those rights were, as we have shown, not merely the *general* right somehow to attempt to communicate views, but the *specific* right to distribute literature and and to solicit contributions along public streets. It would be self defeating for the Court to construe a rule prohibiting all distribution of literature or solicitation as a mere neutral regulation of the right to distribute literature and to solicit on city streets.

Indeed, the Court made quite clear several times that it

[4] It does not appear that in any of the cases the solicitation of contributions involved approaching individuals walking along the street, rather than summoning people to the door of their own homes. But the latter surely presents a more difficult question than the former; additional state interests in protection of privacy and property are present in the house-to-house canvassing situation (*see,* e.g., *Martin, supra,* 319 U.S. at 144-145; *Hynes* v. *Oradell,* 425 U.S. at 619). While no state interests beyond those involved in literature distribution of sales are implicated by street solicitation, that the quotation in the text from *Schamberg* recognizes a right to solicit "on the street" confirms this observation.

was not engaged in taking with one hand what it had granted with the other when it alluded to the possibility of narrow time, place and manner regulations. For example, in *Hague* the Court stressed that while "[t]he privilege of a citizen of the United States to use the streets and parks for communication of views . . . may be regulated . . . *it must not, in the guise of regulation, be denied.*" *Id.*, at 515-16. Similarly in *Schneider*, the Court noted that a municipality may "lawfully regulate the conduct of those using the streets," but stated that it may do so only "[s]o long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature." 308 U.S. at 160. Again—for the state and local governments of forty years ago were apparently no more receptive to the message than Minnesota is now—the Court repeated in *Jamison*, that while a city, as part of its "powers over its streets" can make "reasonable regulations for the control of traffic and the maintenance of order" (*id.* at 415), it does not have "the power *absolutely to prohibit the use of the streets* for the . . . dissemination of information by handbills . . . at all times, at all places, and under all circumstances," (*id.* at 416 (emphasis supplied)).

What the Court did have in mind by noting that "the peace, good order and comfort of the community may imperatively require regulation of the time, place and manner of distribution" (*Martin, supra*, 319 U.S. at 863), can be best gleaned from the example it gave, and from the two cases of the era in which regulation of use of the streets for communicative activity were sustained—*Cox* v. *New Hampshire*, 312 U.S. 569; *Kovacs* v. *Cooper*, 336 U.S. 77. Stated to be valid regulations of the right to use the streets to solicit and to distribute literature were:

> (a) A rule against "taking [one's] stand in the middle of a crowded street, contrary to traffic regulations, and maintain[ing] [one's] position to the stoppage of all traffic." *Schneider*, 308 U.S. at 160.
>
> (b) Prohibition of forming "a cordon across the street . . . [allowing] no pedestrian to pass who did not accept a tendered leaflet." *Id.*

(c) "Regulations against throwing literature broadcast in the streets." *Id.*

(d) Penal laws prohibiting fraud and neutral registration requirements. *Cantwell, supra,* 319 U.S. at 306.

(e) A licensing requirement for parades or processions, where " 'the distribution of literature' . . . was not in any respect regulated," nor were "groups not marching in formation," and where the licensing authorities were without power to deny altogether permission to parade, although they could condition the permit upon "such conditions or changes in time, place and manner as would avoid disturbance." *Cox* v. *New Hampshire, supra,* 312 U.S. at 575-576.

(f) A rule against "a man with a communicable disease . . . [distributing] leaflets on the street or to homes." *Martin, supra,* 319 U.S. at 143.

(g) A law "preventing the distribution of leaflets in a church against the will of the church authorities." *Id.*

(h) A prohibition upon overamplified loudspeakers. *Kovacs, supra.*

These examples illustrate the oft-repeated principle that to be valid, *as applied to communicative activity on the public streets,* an ordinance must be "narrowly drawn" (*Murdock, supra,* 319 U.S. at 116) so as to serve only the non-speech interests which justify the intrusion.

Minnesota proposes a contrary rule—that a non-content-related restriction of communicative activity on the public streets "will pass constitutional muster so long as it allows for appropriate alternative means of engaging in communication or religious activity." Pet. Br. at 16. But, as the absence of any specific page citations might suggest, the cases cited in support of that proposition (*Grayned* v. *Rockford,* 408 U.S. 102; *Cox* v. *New Hampshire, supra; Cox* v. *Louisiana,* 379 U.S. 536) offer no support whatever for this proposition, and are in fact directly to the contrary. *Grayned* expressly noted that any such regulation must be "narrowly tailored to further the State's legitimate interest." so that " 'undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.' [*Tinker* v. *Des Moines Ind. School Dist.,* 393 U.S. 503, 512]." 408 U.S. at 116-117.

Minnesota's specific analogy to *Cox* v. *New Hampshire* (Pet. Br. 31-32) fails precisely because the narrowness of the *Cox* regulation is ignored: In *Cox*, the state did not *forbid* parades generally upon public streets, nor permit public authorities to refuse to license a particular parade. Rather, the "licensing" was in effect a prior notice requirement so that police protection could be assured and conflicting parades at the same location at the same time prevented.[5]

Thus, Minnesota's attempt to cast its "booth rule" as a "time, place or manner" restriction turns inside out the cases in which that concept was developed. Only limited, tailored restrictions upon the right to use city streets for solicitation and distribution were contemplated, not the complete supplanting of that right because the activity was permitted elsewhere.

2. It is possible, of course, that Minnesota could come up with some convincing consideration previously ignored which would justify reconsideration of these now well-

[5] In later cases as well, the Court has upheld time, place, and manner regulation of communicative activity on public streets (as opposed to other publicly owned locations, compare, e.g. *Adderly* v. *Florida*, 385 U.S. 39) only when "the manner of expression is *basically incompatible* with the normal activity of a particular place at a particular time" (*Grayned supra*, 408 U.S. at 116, emphasis supplied), and when the legislation enforced is "narrowly tailored" (*id.*) to eliminating such incompatible activity. Perhaps the paradigm of such valid legislation was that involved in *Grayned:* only activity "adjacent to any building in which [there is] a school or . . . class" (*id.* at 107-108) was included; the ban applied only when the "school or. . . . class . . . is in session (*id.*)"; and only activity which actually "disrupts or is about to disrupt" (*id.* at 119) was forbidden. The state interest in maintaining a conducive atmosphere for learning was held to justify this finely tuned rule. See also *Cox* v. *Louisiana*, 379 U.S. 559 (Statute forbidding picketing "in or near" a courthouse with the intent of interfacing with, obstruction or impeding administration of justice" justified by need to protect "appearance of even-handed administration of justice"); *Cameron* v. *Johnson*, 390 U.S. 611 (Statute prohibiting picketing "in such a manner as to obstruct or unreasonably interfere with free ingress or egree to and from any . . . county . . . courthouses").

settled doctrines. But, in fact, all of the reasons the state puts forward in support of its rule were considered and rejected in the earlier cases.

As to the plea that equality among potential exhibitors must be maintained,[6] the Court repeatedly stressed that "freedom of press, freedom of speech, freedom of religion are in a preferred position" (*Murdock, supra,* 319 U.S. at 115), so that:

> The fact that the ordinance is "nondiscriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not have the ordinance. [*Id.*]

That "hucksters and peddlers" have now been recognized to have some First Amendment rights as well (e.g. *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Council,* 425 U.S. 748) does not alter the analysis; those rights are not coextensive with those seeking to disseminate religious, political and economic views rather that to sell a product. Compare *In Re Primus,* 436 U.S. 412, with *Ohralik* v. *Ohio State Bar Ass'n,* 436 U.S. 447; *see Ohralik,* 436 U.S. at 456 ("commercial speech [is afforded] a limited measure of protection . . . allowing modes of regulation that might be impermissible in the realm of noncommercial expression").

Nor is protection of fairgoers from the momentary annoyance of having to refuse a solicitator or a distributor of literature a valid ground for denying wholesale the right to make the approach. In *Martin, supra,* the primary argument made on behalf of the prohibition upon door-to-door distribution and embraced by dissenting members of

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[6] Contrary to the state's suggestion, we do not understand that ISKON is seeking a preferred position *among* those who wish to engage in propagation of political, economic, or religious views by street distribution or solicitation of the fairgrounds. Rather, the right respondents seek to assure would be available equally to groups such as labor organization and persons supporting political candidates and causes.

the Court was that "summoning [residents] . . . to their doors . . . may . . . disturb householders" (319 U.S. at 156 (Reed, J., dissenting)); indeed, the city showed in particular that many of the inhabitants in the primarily industrial town worked evenings, "so that casual bell pushers might seriously interfere with the hours of sleep although they call at high noon," (*id.* at 144.). Conceding that "door to door distributors of literature may be . . . a nuisance" (*id.* at 145), the Court nonetheless refused to approve a complete ban upon such activity, viewing the responsibility for citizens themselves to take steps to refuse unwanted material as preferable to substituting "the judgment of the community for the judgment of the householder . . . [and limiting] the dissemination of knowledge," (*id.* at 144).

As to prevention of fraud, both the seminal cases and more recent ones do indeed recognize that the interest is a substantial one. See Pet. Br. at 24-25. But, the Court in each of the cases cited by petitioners, and in others as well, refused to approve a prophylactic regulation premised upon fraud prevention, holding instead that government "may serve its legitimate interests [in preventing fraud] but it must do so by narrowly drawn regulations designed to serve those interests without necessarily interfering with First Amendment freedoms" (*Village of Schamberg, supra,* 444 U.S. at 637); and that the fact that broad prohibition may be "easier" to enforce (Pet. Br. at 27) is of no moment, because "considerations of this sort do not empower a municipality to abridge freedom of speech and press" (*Schneider, supra,* 308 U.S. at 104).

Thus, while the Court has several times suggested that registration requirements designed only to assure that the individuals who solicit the public for funds are accountable under the penal laws may well be acceptable (e.g., *Cant-*

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[7] Preventing any annoyance of others due to the *ideas* espoused by street distributors or solicitors is, of course, not an interest the state may further under the First Amendment. This Court has had many occasions so to reiterate. See, e.g., *Cantwell, supra,* 310 U.S. at 310; *Martin, supra,* 319 U.S. at 143; *Kunz* v. *New York,* 340 U.S. 290.

well, supra, 310 U.S. at 306; *Schneider, supra,* 308 U.S. at 163; *Murdock, supra,* 319 U.S. at 113), the Court recently has disapproved two registration ordinances primarily because they permitted either directly or by delegation to city officials denial of the right to solicit freely in some circumstances. *Hynes, supra; Village of Schaumberg, supra.* The latter case is particularly informative, for there was an attempt, at least, to cure the primary defect the Court had pointed to in earlier solicitation statutes (the spectre of censorship through the exercise of administrative discretion), and there was as well an effort to create an objective measure to separate the potentially fraudulent from the bona fides. Nonetheless, the Court insisted that "[t]he Village's legitimate interest in preventing fraud can be better served by measures less intrusive than a direct prohibition on solicitation" (444 U.S. at 637); including penal prosecutions and disclosure statutes. A prohibition upon *all* solicitation rather than on only some, in the name of fraud prevention, should not fare better.[8]

Finally, the state's desire to preserve free use of the streets is the interest perhaps most vigorously expounded by the governmental entities involved in the case of 30 and 40 years ago. Once again, the Court conceded the interest to be substantial but refused to countenance a complete prohibition:

> Of course, states may provide for control of travel on their streets in order to insure the safety and convenience of the travelling public. *Cox* v. *New Hampshire,* 312 U.S. 569. . . . They may punish conduct on their streets which is in violation of a valid law. [citation omitted.] . . . [B]ut [t]he right to distribute handbills concerning religious subjects on the streets may not be prohibited at all times, at all places, and all circumstances. [*Jamison, supra,* 318 U.S. at 416; see also *Hague, supra; Schneider, supra.*][9]

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[8] Minnesota's only suggestions as to the relevance of the booth rule to fraud protection is "to enhance the ability of fairgoers to become informed of the identity and purpose of salespersons" (Pet. Br. at 25) and to facilitate prosecutions (*id.* at 28). Both interests could be met by a registration and identification program for roving solicitors.

[9] The citation to *Cox* v. *New Hampshire* as an example of traffic

Thus, the state in this case has advanced no interest different *in kind* from those considered by this Court when it forbade broad prohibition upon solicitation and distribution on city streets. The only question, then, is whether upon a state fairgrounds the state's need to advance its interest is so much greater in *degree* than upon city streets as to justify a complete prohibition upon peripatetic distribution and solicitation.

II. The Public Walkways of a State Fair Do Not Differ From the Streets and Roads of a City in Any Way Which Would Justify a Complete Prohibition of Solicitation and Distribution.

This Court has in recent years looked at several different types of public property in order to determine whether the same broad tolerance for communicative activity that prevails upon city streets must be exercised. Generally, the inquiry has turned upon the perception that "public places differ very much in their character, and before you could say whether a certain thing could be done in a certain place you would have to know the history of the particular place." (*M'Ara* v. *Magistrates of Edinburgh* [1913] Sess. Cas. 1059, 1973-74; quoted in *Lehman* v. *City of Shaker Heights*, 418 U.S. 298, 302. As a consequence, "the nature of the forum and the conflicting interests involved" (*Lehman*, 418 U.S. at 302) are the relevant considerations.

As to the "nature of the forum," the state fairground's thoroughfares are in every respect imaginable comparable to city streets. The physical resemblance is plain, as a brief glance at the map which appears in the Appendix suggests (A-37). That the streets and roads are referred to as such by state officials (A-35), and are even given street names is indicative of the resemblance (A-41, A-57). Compare *Lehman, supra* (interior of public transit vehicles is not subject to public forum analysis because "[h]ere, we have no open spaces, no meeting hall, park, street corner or other public thoroughfare." (*Id.* at 303.)

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control is of particular interest. It suggests, as does a reading of the opinion itself, that the Court viewed a parade as something quite different from diffuse distribution because a parade necessarily interferes with normal street traffic to some substantial degree.

With respect as well to the "pattern of [their] normal activity" (*Grayned, supra,* 408 U.S. at 116), city streets and state fair streets would seem indistinguishable. Both locations are likely to be noisy (contrast *Brown* v. *Louisiana,* 383 U.S. 131 (library); *Tinker, supra* (school)) and crowded, and in both instances some individuals may be walking along purposefully toward a goal while others are wandering, talking, or otherwise passing the time. Indeed, one would expect that the proportion of the former to the latter on a city street to be greater than in a state fairgrounds. Thus, unlike the interior of public libraries, schools, and auditoriums (*Southeastern Promotions Ltd.* v. *Conrad,* 420 U.S. 546), all of which are public forums only to a limited degree (*cf. Grayned, supra,* 408 U.S. at 116), a state fairgrounds, as far as its basic form and function are concerned, is identical to a city street.

Nor can the state interests pertinent to controlling the use of the streets be distinguished. As we have seen (part I, *supra*) there is no difference in kind in the interests asserted in this case and the cases concerning city streets. In this aspect the case differs profoundly from *Greer* v. *Spock,* 424 U.S. 828. In *Greer* the physical and ambience aspects of the location, an open military base, were, as in this case, quite similar to those of a town. *Id.* at 851. But at least two strong state interests—"maintaining the reality and appearance of the political neutrality of the Armed Service" and the military need for "morale and discipline . . . particularly . . . the primary function of the base [—] to provide basic combat training for new recruits" (*id.* at 845, 848 (Powell, J., concurring); see also *id.* at 838-839 (majority opinion))—were present in *Greer* which were of no relevance to an ordinary municipality. Here, there is no additional state interest, and therefore no ground for departing from the analysis applied to city streets.

Minnesota argues that its interest in avoiding annoyance to fairgoers is greater than that of a city with respect to pedestrians (Pet. Br. at 22-23). But a fairgrounds is not similar in this respect to a ballpark or some other entertainment event" (*id.* at 23), for it is closed only in the sense that a medieval walled city is "closed"; there is still a large,

open area in which to wander, and the notion that fairgoers could not avoid unwanted solicitations by simply walking on is unrealistic.

Indeed, the state is somewhat contradictory on this point, for it suggests later that state fairs differ from city streets in that it is easier for roving solicitors to vanish as "a face that disappears in the crowd" (*id.* at 28), so the interest in fraud prevention requires more than registration and prosecution of actual frauds. In fact, the one observation is no more valid than the other, and the possibility of either the solicitor avoiding the police or the pedestrian refusing the solicitor would appear to be the same on the fairgrounds as on the street.

Finally, the public safety interest upon the fairgrounds is again not substantially different from that present in cities, public streets are also congested, and in cities "[m]any [shoppers] and workers [too] need medical care for injuries." Pet. Br. 30. The reliance in this respect upon *Cox* v. *New Hampshire* is, for reasons alluded to earlier, entirely misplaced; *Cox* involved a parade, which is inherently and necessarily disruptive of traffic, and at any rate did not permit a prohibition but only regulation.

In sum, Minnesota has pointed to no aspect of its operation of the state fairs which differs in any significant way from the problems faced daily by municipal authorities. Just as the Court has required those authorities to solve their problems by means short of a complete prohibition upon use of the streets for distribution and solicitation so it must require the state in this case to do the same.

CONCLUSION

For the above stated reasons the judgment below should be affirmed.

Respectively submitted,

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CASE NO. 80-795
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

MICHAEL HEFFRON, etc., et al.,

Petitioners,

vs.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., et al.,

Respondents.

Brief Amici Curiae of The Gujarat Cultural Association, Inc., The Hindu Society of Colorado, and The Hindu Cultural Society, Inc.

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INTEREST OF AMICI

Amici organizations[1/] exist to promote

1/ See Appendix A for description of amici.

Indian and Hindu culture and religion, and have a symbiotic relationship with respondent ISKCON because they share a fundamental faith. Amici are interested in the case at bar because they believe this Court's sanctioning of the booth rule would spawn similar restrictions in public fora nationwide, severely harming ISKCON and amici's symbiotic and separate religious, cultural and associational interests.

Amici have several vital religious interests in the resolution of the case at bar. Many of amici's members, like all members of ISKCON, are Vaishnavas, devotees of the Supreme Lord fully described and known as Sri Krishna (or Sri Vishnu) in the ancient Sanskrit Vedic literature. Although some of amici's members belong to different schools of Vaishnavism than the Gaudiya school to which ISKCON devotees belong, they share a

deep, fundamental faith.

The essential exercise of this fundamental faith is sankirtan, interpersonal glorification of the Supreme Lord through dissemination of information on Vaishnavism (or Krishna Consciousness), along with reciprocal devotional services and contributions. Sankirtan may be performed among Krishna devotees as in the symbiotic relationship between ISKCON and amici members, to be described below. However, the Vaishnava Vedic scriptures mandate that proselytizing sankirtan be emphasized over inter-devotee sankirtan, especially for devotees initiated by,and serving under,Vaishnava spiritual masters who are charged with administering these scriptures' teachings to all souls.

In the present day American Vaishnava movement, the full-time ISKCON preachers perform most of the emphasised proselytizing

sankirtan, yet amici Vaishnavas also, at times, join with ISKCON members in peripatetic public-place sankirtan, especially during major Vaishnava holiday celebrations which are typically held in public parks and streets (e.g., the now world-famous Jaganatha Cart Festivals). Thus, the above described predictable nationwide ramifications of sanctioning the subject booth rule will severely and directly harm both ISKCON's and amici's essential religious public-place sankirtan practices.

Further, apart from the severe physical constraints imposed by such booth-type restrictions, amici are concerned with the unavoidable chilling effect such constraints would inflict upon the vital, outreaching sankirtan spirit itself, without which even the attempts to continue such fundamental religious educational work would cease.

Additionally, the inter-devotee sankirtan found in the ISKCON-amici symbiotic relationship, will also be severely harmed, though indirectly, by the severe booth-type restrictions. This relationship consists primarily of ISKCON providing its various Vaishnava literatures, temple services and programs, holiday celebrations, schools, retreats, and in-home religious programs for amici members' use, and their reciprocal offering of their occupational services and monetary contributions to support such programs. These inter-devotee sankirtan programs provide the cultural and associational milieu in which amici's and ISKCON's Vaishnava religious philosophy and practices can flourish.

Although the reciprocation by amici members more than offsets ISKCON's costs for the religious services and material it pro-

vides, such contributions, together with all others except those received in public-place sankirtan, constitute only a small fraction of the funds required to maintain the programs offering such services and materials. Thus, if public-place sankirtan is severely restricted by the described ramifications of sanctioning the subject booth rule, inter-devotee sankirtan (among ISKCON and amici members, and a greater number of others who today participate in American Vaishnavism) will be seriously stunted.

Thus, ami i have a strong interest in the case at bar since their essential Vaishnava religious exercises -- inter-devotee and proselytizing sankirtan -- will be greatly affected.

SUMMARY OF ARGUMENT

ISKCON and amici practice the Vaishnava religion, or Krishna Consciousness. Vaishnavism, especially in the Gaudiya Vaishnava school to which all ISKCON and some Amici members belong, mandates as the primary required religious exercise -- sankirtan. Sankirtan is interpersonal glorification of the Supreme Lord, who is fully described and known as Sri Krishna (or Sri Vishnu) in the ancient Sanskrit Vaishnava Vedic scriptures. Sankirtan may be performed between devotees or by proselytism, the latter being strongly emphasized over the former in these Vaishnava scriptures, and especially in the writings of the Gaudiya lineage of spiritual masters to which ISKCON belongs.

Further, these scriptures mandate that in this proselytizing sankirtan, literature distribution and accompanying requests for

reciprocal contributions be emphasized over oral proselytization. The scriptures also require the devotee to perform sankirtan out of sincere compassion and to take the initiative in literature distribution or oral expression, rather than waiting passively to be approached for knowledge of Krishna Consciousness.

Since Rule 6.05 prohibits such missionary, devotee-initiated literature distribution, and allows only receiver-prompted distribution at a booth, it prevents amici and ISKCON members from fulfilling the most essential mandate of their Vaishnava religion.

Thus the state has a great burden to demonstrate the necessity for inflicting this great harm on ISKCON's religion; and the Court should carefully weigh the more widespread great harm on American Vaishnavism that sanctioning this booth rule should generate.

ARGUMENT

Introduction

The above-summarized points of argument, with supporting evidence, have been made in rudimentary form in this case by ISKCON. However, amici desire to substantially clarify, expand and strengthen them by providing (1) a brief history by a non-ISKCON scholar of Gaudiya Vaishnavism and ISKCON; and (2) supportive quotations from the Vedic Vaishnava scriptures with derivitively strengthened arguments, which will substantially increase such arguments' understanding.

History of Gaudiya Vaishnavism and ISKCON.

Diana L. Eck, Assistant Professor of Hindu Religion at Harvard University, recently wrote:

> The Krishna Consciousness movement [the International

Society for Krishna Consciousness or "Hare Krishna" society] is part of an important and distinctive tradition of devotional faith, the Gaudiya Vaishnava tradition [or *sampradaya* -- disciplic school], which began in the sixteenth century [in India] with the great saint Sri Caitanya, but which participates in a much older movement of devotion . . . called *bhakti* . . . or the love of God.

The *bhakti* tradition found a full expression in the ancient *Bhagavad Gita*, "The Song of the Lord" [Krishna].

. . .

Like the New Testament, the *Bhagavad Gita* is a gently revolutionary treatise. It picks up and redefines many of the major terms of the ancient Vedic ritual tradition, making religious life accessible and meaningful not only to the elite few -- the *brahmana* priests, the *gurus*, *yogis*, and monks -- but also to the common people. . . .

. . .

The tradition of devotional piety that began in India with the *Gita* is long, varied and rich. The life of the incarnate Lord Krishna is told in some of the

great [Vedic] scriptures, particularly the Bhagavata Purana [or Srimad Bhagavatam].

One of the most vigorous and vibrant periods of devotional piety on the Indian subcontinent began about five hundred years ago, when a new wave of this ancient bhakti tradition broke across north India as virtually a Protestant Reformation of the Hindu tradition.

There were many poets, saints, and theologians who contributed to this era of exuberant devotion. Among them was the Bengali spiritual leader Sri Caitanya, who may be called the founder of the Hare Krishna movement. [H]e gave himself fully to . . . popularizing and developing . . . the chanting and singing of the holy names of the Lord. . . .

Sri Caitanya traveled throughout India and attracted many followers . . . and according to his biographers he left the entire South chanting the name of Krishna. . . . [and] in the North . . . converted great nondualist philosophers as well as some of the world-renouncing sannyasis of Banaras to the love of Krishna.

Caitanya's devotion to Krsna was both intense and magnetic. Accord-

ing to his immediate followers, Caitanya revealed himself as Krishna's beloved Radha manifest together in one body.

Sri Caitanya himself left only eight written verses. After he passed away, however, he was followed by a group of six inspired disciples and scholars called Gosvamis who settled in Krishna's ancient homeland of Vrndavana and contributed a tremendously rich body of literature to the emerging Gaudiya Vaishnava tradition . . . [including] the biography of Sri Caitanya, the Caitanya Caritamrta. . . .

From this first generation of disciples . . . the great teachers of this devotional tradition emerged, one after another, passing their insight from one generation to the next. They have followed in succession to the present day. . . .

In 1933 one of the leaders of the Gaudiya Vaisnava movement, Bhaktisiddhanta Saraswati Gosvami, initiated a new disciple: A. C. Bhaktivedanta Swami, whose special task was to bring the message of krsna-bhakti to the English-speaking world. In 1944, A. C. Bhaktivedanta Swami began to publish in Calcutta an English semi-monthly magazine called Back to Godhead, which is published in

the United States today under the same name. During the fifties he retired to Vrndavana, where he lived a very simple life in the temple of Radha-Damodara and began to translate into English the voluminous Bhagavata Purana [Srimad Bhagavatam]. In 1965 A.C. Bhaktivedanta Swami came to the United States, arriving by freighter, with little money and no contacts. In time, with difficulty, he established the first Krishna temple in the United States, a Second Avenue storefront on the Lower East Side in New York. Before long, one could hear the name of Krishna in Tompkins Square Park or on Fifth Avenue. Within a decade the International Society for Krishna Consciousness -- the American strand of the Gaudiya Vaishnava tradition -- spread to most major American cities. It became known by the very words with which the saint Caitanya praised the Lord some five hundred years ago: "Hare Krishna!" "Praise Krishna!"

. . .

In the summer of 1978 while I was doing my own research in north India, I was approached by a number of Hindus who assumed, because I wore a sari and spoke Hindi, that I was a Hare Krishna devotee. Without exception they praised the work of the International Society for Krishna

> Consciousness in India, both in Vrndavana [the birthplace of Lord Krishna] and in the birthplace of Caitanya at Mayapur in Bengal. I remember especially one old woman who came up to me in a temple in Banaras, and touched my feet in a gesture of respect, and said to me in Hindi, "The temple you have built to Lord Krishna in Vrndavana is splendid, so splendid, and I want to thank you."
>
> Surely the greatest affirmation of the authenticity and significance of the Hare Krishna movement has come from Hindus themselves. In goston the ISKCON temple has gecome a gathering place for many of the Indians who live here as professional people or as students. There on Commonwealth Avenue, together with American devotees, they worship Krishna and celebrate the great festivals of the Hindu year. And in Vrndavana, Hindus crowd into the new Krishna-Balarama temple and sing "Hare Krishna" with those young Americans who have become new participants in their ancient tradition.

Dr. Diana L. Eck, "Krishna Consciousness in Historical Perspective," Back to Godhead, Vol. 14, No. 20 (1979), pp. 26-29. See also, first affidavit of Joseph Beca, paras. 3, 11, 13, 14, 21, 22, 24.

General Description of Sankirtan and Importance of Proselytizing over Inter-Devotee Sankirtan

In this article by Dr. Eck, Sri Chaitanya, "the founder of the Hare Krishna movement," or Gaudiya Vaishnava movement, is described as performing oral dissemination of Krishna Consciousness by chanting and oral proselytizing. Also described is the essential role of the Bhagavad Gita and Bhagavata Purana (Srimad Bhagavatam), as well as the rich body of writings pursuant thereto, most importantly the Caitanya Caritamrta composed by the spiritual masters succeeding Sri Chaitanya up to Bhaktivedanta Swami Prabhupada (ISKCON's founder) and disseminated by their followers.

Such oral and written dissemination are the two essential preaching components of sankirtan. (See Caitanya Caritamrta, Madhya, Chap. 7, v. 128; first

Afft. of J. Beca, paras. 4, 11-14, 22-24, 26, 32-41.) Sankirtan is the primary, mandated practice of Gaudiya Vaishnavism and is meant for personal communication about, and glorification of Sri Krishna (God) to enlighten all persons to pure Krishna Consciousness. See Srimad Bhagavatam, canto 11, chap. 5, v. 32; afft. of J. Beca, paras. 4, 22.

Of the two forms of sankritan -- inter-devotee and missionary proselytizing (devotee to non-devotee) -- the latter is strongly emphasized over the former by the Vaishnava scriptures and lineage of spiritual masters:

> My dear Lord Nrsimhadeva [an avatar of Sri Krishna], I see that there are many saintly persons indeed, but they are interested only in their own deliverance. Not caring for the big cities and towns, they go to the Himalayas or the forest to meditate with vows of silence [mauna-vrata]. They are not interested in delivering others. As for me, however, I do not wish to be liberated alone, leaving aside all these poor foools and rascals. I know that without Krishna consciousness,

> without taking shelter of Your lotus feet, one cannot be happy. Therefore I wish to bring them back to shelter at Your lotus feet.

Srimad Bhagavatam, canto 7, chap. 9, v. 44 spoken by Prabhlada Maharaja, one of the foremost Vaishnava spiritual masters and kings).

> Vasudeva Datta told Chaitnaya Mahaprabhu, "My dear Lord, You incarnate just to deliver all conditioned souls. I have now one petition, which I wish You would accept....My Lord, my heart breaks to see the sufferings of all conditioned souls; therefore I request You to transfer the karma [sinful reactions] of their sinful lives upon my head. My dear Lord, let me suffer perpetually in a hellish condition, accepting all the sinful reactions of all living entities. Please finish their diseased material life."

Caitanya Caritamrta, Madhya, chap. 15, vv. 160, 162-163. Elsewhere, among scores of similar orders, Swami Prabhupada instructs ISKCON members:

> Preaching Caitanya Mahaprabhu's cult throughout the world is more important than staying in Vrindavan or Jagannatha Puri [two of the largest and most important holy places of

> Vaishnava association in India] for one's own personal satisfaction. Spreading Krishna consciousness is Sri Chaitanya Mahaprabhu's mission; therefore His sincere devotees must carry out His desire.

Trans. Bhaktivedanta, Chaitanya Caritamrita, Madhya, Chap. 16, vv. 64, purport. Thus for ISKCON Gaudiya Vaishnavas, missionary proselytizing sankirtan must take precedence over inter-devotee sankirtan. See also first affadavit of J. Beca, paras. 4, 22, 24, 32, 36, 37, 41.

Reciprocal Contributions Component of Sankirtan

Besides the oral and literary preaching components, sankirtan involves the likewise spiritually essential reciprocation by recipients of such preaching, generally expressed as contributions to support such preaching. This consummative reciprocation by contributions in the

sankirtan process not only provides the very means to continue its essential preaching activities (see first afft. of Beca, paras. 4, 42), but itself is a form of engaging or linking one's resources in spiritualizing, divine devotional offerings or bhakti yoga, the goal of such preaching:

> It is the duty of every living being being to perform welfare activities for the benefit of others with his life, wealth, intelligence and words.

Chaitanya Caritamrita, Adi, Chap. 9, v. 42 (emphasis added).

> O son of Kunti, all that you do, all that you eat, all that you offer and give away, as well as all austerities that you may perform, should be done as an offering unto Me.

Bhagavad Gita, Chap. 9, vv. 27,28 (emphasis added).

> Offering gifts in charity, accepting charitable gifts, revealing one's mind in confidence, inquiring confidentially, accepting prasada [sanctified vegetarian foodstuffs] are the six symptoms of love shared by one

devotee and another.[2/]

Sri Upadeshamrita, v. 4 (emphasis added).

Thus donation of wealth in the Lord's service, constitutes an essential component of sankirtan, which consumates the two essential oral and literary preaching components; all three components being interpersonal devotional service to the Lord.

Importance of Literature Distribution Over Oral Proselytizing

Of such mandatory oral and literary preaching, the literary is by far the most important. The respondent's Vedic Vaishnava scriptures teach that in the present age -- Kali Yuga -- peoples' memory, and receptivity

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2/ In his translation (see trans. Bhaktivedanta, Nectar of Instruction) of this verse Swami Bhaktivedanta explains that this reciprocation includes exchanges between established devotees and those just becoming involved (such as in proselytizing sankirtan).

to spiritual life, are slight;[3] and the deterioration of all material necessities of life would generally make people impatient and lacking the goodness which fosters spiritual practices.[4] Therefore the ancient Vedas (literally, "divinely revealed knowledge"), cannot be effectively preserved and transmitted orally, because they will, by that process alone, be poorly absorbed and forgotten. Thus, these Vedas or spiritual teachings were compiled in literary form explicitly for popularizing them for assimilation by the ignorant and forgetful masses:

> The great sage, who was fully equipped in knowledge, could see, through his transcendental vision, the deterioration of everything

---

3/ Srimad Bhagavatam, canto 1, chap. 1, v. 10. See also first afft. of J. Beca, par.12.

4/ Id., chap. 4, vv. 16-18; chaps. 16-18, passim; canto 12, chap. 2, vv. 1-9. See also first afft. of J. Beca, para. 12.

material, due to the influence of the age. He could also see that the faithless people in general would be reduced in duration of life and would be impatient due to lack of goodness. Thus he contemplated for the welfare of men in all statuses and orders of life.

He saw that the sacrifices mentioned in the Vedas were means by which the people's occupations could be purified. And to simplify the process he divided the one Veda into four, in order to expand them among men.

The four divisions of the original sources of knowledge [the Vedas] were made separately. But the historical facts and authentic stories mentioned in the Puranas are called the fifth Veda....

Srimad Bhagavatam, Canto 1, Chap. 4, vv. 17-20.

See also first afft. of J. Beca, para. 12, 13.

"The Vedic literatures composed by the omniscient Mahamuni Vyasadeva are evidence of all spiritual existence. Only through these revealed scriptures can all conditioned souls attain knowledge."

Chaitanya Caritamrita, Madhya, Chap. 20, v. 353.

See also first afft. of J. Beca, paras. 11-13, 20d.

The compiler-author of these Vedas, Vyasadeva, was foretold in them to be an incarnation of Krishna Himself:

> This Srimad Bhagavatam is the literary incarnation of God, and it is compiled by Srila Vyasadeva, the incarnation of God. It is meant for the ultimate good of all people, and it is all-successful, all-blissful and all-perfect.

Srimad Bhagavatam, Canto 1, Chap. 3, v. 40. See also Id., Chap. 5, v. 21; first afft. of J. Beca, para. 12. Of these written Vedas, the "mature fruit" or "cream" is the epic Srimad Bhagavatam:

> Sri Vyasadeva delivered it [the Srimad Bhagavatam] to his son, who is the most respected among the self-realized, after extracting the cream of all Vedic literatures and histories of the universe.

Srimad Bhagavatam, Canto 1, Chap. 3, v. 41. See also Id., Chap. 1, vv. 2,3. This Bhagavatam is meant to enlighten all persons in this dark age. See Id., Chap. 3, vv. 40, 43.

Writing commentaries on this Srimad Bhagavatam and other Vedic literature, and copying and distributing them has occupied Vaishnava devotees in respondent's lineage for millennia, from Vyasadeva's compilation to the great oral and literary sankirtan expansion inaugurated by Sri Caitanya, whose followers wrote over half a million verses:

> Both Rupa Gosvami and Sanatana Gosvami [two chief disciples of Sri Caitanya] brought various scriptures to Vrindavana and collected the essence of these by compiling many scriptures on devotional service. In this way they delivered all rascals and fallen souls....
>
> Thus Srila Rupa Gosvami, Sanatana Gosvami and their nephew Srila Jiva Gosvami, as well as practically all of their family members, lived in Vrindavana and published important books on devotional service.

Caitanya Caritamrita, Madhya, Chap. 1, vv. 33, 45. See also Id., Antya, Chap. 4, vv. 217-231 (wherein the number of verses (over half a million) and the names and descriptions of these

scriptures are given); trans. Bhaktivedanta, Id., Madhya, Chap. 9, v. 245, purport; Id., Antya, Chap. 7, vv. 132-136, and Bhaktivedanta purport in his trans. to v. 134; first afft. of J. Beca, para. 33.

Further, all these Vedic Vaishnava scriptures proclaim that only through the realization of a pure devotee-spiritual master can the proper import and application of their injunctions be understood and successfully practiced, in any given time and circumstance:

> Just try to learn the truth by approaching a spiritual master. Inquire from him submissively and render service unto him. The self-realized soul can impart knowledge unto you because he has seen the truth.

Bhagavad Gita, Chap. 4, v. 34.

> In order to learn the transcendental science, one must approach the bona fide spiritual master in disciplic succession, who is fixed in the Absolute Truth.

Mundaka Upanishad, pt. 1, Chap. 2, v. 12. Thus, the instructions of ISKCON's spiritual master,

Bhaktivedanta Swami, must be taken as authoritative in revealing the importance of literature distribution over oral proselytizing (and all other devotional services). Among literally hundreds of written instructions on point, he writes:

> In our Krishna Consciousness Movement, all our activities are concentrated upon distributing Krishna literature. This is very important. One may approach any person and induce him to read Krishna literature so in the future he may also be a devotee.

Trans. Bhaktivedanta, Srimad Bhagavatam, Canto 10, Chap. 2, v. 3, purport.

> ...to write books and publish them for the enlightenment of the general populace is real service to the Lord. That was Srila Bhaktisiddhanta's [Bhaktivedanta's spiritual master's] opinion.... Temple construction is meant for the general populace and neophyte devotees, but the business of advanced empowere devotees is to write books, publish them and distribute them widely... Consequently, we always request members of the International Society for Krishna Consciousness to publish as many books as possible and distribute them widely throughout the world.

Trans. Bhaktivedanta, Caitanya Caritamrta, Madhya, Chap. 19, v. 132, purport.

Thus the supreme importance of literature distribution over oral proselytizing in sank sankirtan, the mandated, most essential religious practice for ISKCON Vaishnavas, is clear.

Requirement for Devotee-Initiated Proselytizing Sankirtan, Which Cannot Survive in a Booth

Sankirtan must be performed as Sri Caitanya consistently performed and taught it -- approaching freely every type of person, whether already spiritually inclined or not. Indeed, distributing Krishna Consciousness to those not yet spiritually inclined or enlightened is the sine qua non of Caitanya, Krishna's most munificent incarnation as the Kali Yuga Avatar, 5/

5/ The Kali Yuga Avatar is the Ava- (cont.)

and is the required manner of sankirtan for all his followers:

> O most munificent incarnation! You are Krishna Himself appearing as Caitanya Gosani. No other Lord is as merciful in delivering the fallen souls.

Id., Adi, Chap. 2, v. 22.

> Thus He, [Sri Caitanya] spread kirtan [sankirtan] even among the untouchables....

Id., Adi, Chap. 4, v. 40.

> All the wealth in the world cannot equal the value of one such nectarean fruit of devotional service.
>
> Not considering who asked for it and who did not, nor who was fit and who unfit to receive it, Caitanya Mahaprabhu distributed the fruit of devotional service.
>
> The transcendental gardener, Sri Caitanya Mahaprabhu, distributed hand-

---

5/ (cont.) tar, or divine incarnation, of the Supreme Lord Kirshna, Who teaches the primary required form of religion for all the people in the present spiritually dark universal age, called Kali Yuga: "Thus He initiated the dharma [religion] for the age of Kali...." Caitanya Caritamrta, Adi, Chap. 4, v. 226.

ful after handful in all direction, and when the poor hungry people ate the fruit, the gardener smiled with great pleasure....

"I am the only gardener. How many places can I go? How many fruits can I pick and distribute?

"It would certainly be a very laborious task to pick the fruits and distribute alone....

"Therefore I order every man in this universe to accept this Krishna Consciousness movement and distribute it everywhere."

Id., Adi, Chap. 9, vv. 28-30, 34-36.

Lord Caitanya Mahaprabhu has freely given this love of Krishna everywhere and anywhere, even to the most fallen.... What then to speak of those who are already pious and elevated?

Id., Adi, Chap. 8, v. 20.

Sri Caitanya Mahaprabhu replied...

"Instruct everyone to follow the orders of Lord Sri Krishna as they are given in Bhagavad Gita and Srimad Bhagavatam. In this way become a spiritual master and try to liberate everyone in this land."

Id., Madhya, Chap. 7, vv. 127, 128. See also first afft. of J. Beca, paras. 22, 32, 34, 37.

Conclusion

In conclusion, respondent and amici followers of Lord Sri Caitanya (Gaudiya Vaishnavas) when practicing their mandatory sankirtan must (1) concentrate on literature distribtuion rather than oral expression; and, (2) must actively seek out and approach all persons -- not only the very small percentage who are already aware of and interested in Krishna consciousness (and who thus may be motivated to approach respondents in a booth), but the vast majority of other persons who are not (and who thus would not, apart from a few curiosity seekers, approach respondents in a booth).

Quite obviously, in most all major religious traditions, as well as those of many political and public-benefit causes, literature distribution has played and still plays a prominent role, though seldom the strikingly preeminent one it plays for respondents. The written word

is more precise and enduring, thus more important, than the spoken word. Similarly, the dynamic missionary, out-reaching spirit, epitomized and unconditionally required in respondents' sankirtan proselytization, has played, and/or still plays an essential role in the history and present life of such other ideological movements. Indeed, the very definition of proselytizing -- "making of converts" -- reveals the necessity for initiative by the believers to approach and convince the non-believers, and precludes a notion of mere expressions of the faith between fellow believers; or one of passivity, absent the approach of the curious non-believers.

Thus, this power of initiative is the sine qua non, the heart and soul of any serious proselytizing, and the written word its primary medium -- especially for ISKCON. By imprisonment to a booth, rule 6.05 cuts out and shuts up

this heart and soul of the discussed essential literary proselytizing, leaving respondents' mandatory and primary religious duty -- sankirtan -- and all other sincere proselytism -- devoid of life.

This rule, properly struck down by the Minnesota Supreme Court, must be left at rest.

APPENDIX A -- Description of Amici Organizations

1) GUJARAT CULTURAL ASSOCIATION, INC.

The Association was organized in 1972 and currently consists of 850 members who serve a community of 15,000 Gujaratis. Its purpose is to promote Hindu culture and religion, as well as the Gujarat language, for the benefit of all Americans. For more information consult its president, Mr. Bhailal Patel, at 8846 North Laveign Avenue, Skokie, Illinois 60077.

2) HINDU SOCIETY OF COLORADO

Founded in 1978 and consisting of approximately 100 full-time members, the Society promotes Hindu culture and religion. For more information consult its president, Dr. A. Ganga Dharma, at 7464 East Merced Place, Denver, Colorado 80237.

3) HINDU CULTURAL SOCIETY, INC.

Incorporated in 1975 both to promote brotherhood among Americans and Indians, and to preserve Indian culture, the Society currently has 250 full-time members. For more information consult its president, Mr. Suresh Desai, at 66 Berkeley Avenue, Clifton, New Jersey 07111.

No. 80-795

APR 6 1981
ALEXANDER L. STEVAS,
Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

HEFFRON,

Petitioner,

—v.—

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS,

Respondent.

On Writ of Certiorari To The Supreme Court of Minnesota

BRIEF OF AMICUS CURIAE

(INDIA CULTURAL SOCIETY OF NEW JERSEY et al)

ON BEHALF OF RESPONDENT

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INTEREST OF THE AMICAE CURIAE

Amicae Curiae for this brief are the India Cultural Society of New Jersey, the Gujurati Mandel, and the India Association of Greater Hartford. The 2400 members of the above organizations are Indian Americans of the Hindu faith who support the efforts of the International Society for Krishna Consciousness to bring India's great wealth of knowledge to the people of the West. If Rule 6.05's "booth regulation" is allowed to inhibit ISKCON's distribution of the Bhagavad Gita and other Vedic literatures, Westerners will continue to misunderstand India's great spiritual tradition to the detriment of all Indians, particularly those in America.

In addition, members of the above organizations may sometimes desire to distribute these books themselves, and the "booth rule" would deny them the chance to effectively do so.

Because the position and legal arguments presented in this brief are not the same as those in the Respondent's brief, Amicae respectfully request the Court to allow them time for oral argument.

ARGUMENT

I.

WHAT IS ISKCON?

In 1965, at the age of sixty-nine, A.C. Bhaktivedanta Swami Prabhupada sailed from India to Boston with only fifty rupees (seven dollars) (Encylclopaedia Britannica Book of the Year for 1975). Although his attempts were fraught with many difficulties (See generally: Goswami, Planting the Seed, 1980), by 1977 when he passed on in Vrindaban, India, he had established 108 temples on six continents, authored 71 books (102,375,621 distributed, excluding magazines) and his work had been appreciated and eulogized by scholars and religionists throughout the world.

Srila Prabhupada was thirty-second in the spiritual succession of the Gaudiya Vaishnavas which includes Chaitanya Mahaprabhu, the great reformer of

fifteenth century India (Encyclopaedia Britannica). Srila Prabhupada's teachings embodied India's ancient tradition of Vaishnavism (devotion to Krishna or God) and were thoroughly grounded in the five thousand year old classical Vedic scriptures such as Bhagavad-gita, and the Srimad Bhagavatam (Id.). He uncompromisingly taught his disciples the traditional Vaishnava lifestyle including the strict abstention from sex outside of marriage, meat eating, gambling, and all forms of intoxication.

Srila Prabhupada's message was both simple and profound:

> This very important Krishna consciousness movement is meant to save human society from spiritual death. At present human society is [missing] the aim and objective of human life, which is self realization and reestablishment of our lost relationship with the Supreme Personality of Godhead. The Krishna

> consciousness movement is trying to enlighten human society in this important matter. Bhaktivedanta Swami, The Science of Self Realization, 2 (1977).

In 1966, Srila Prabhupada founded the first branch of the International Society for Krishna Consciousness for the purpose of fostering spiritual realization among its members and propagaing the principles of the Vedic scriptures to the people in general (Goswami, Planting the Seed, 132-33 1980). Both these ends are served by the process of book distribution, which is the very heart of ISKCON's modern mission.

One of ISKCON's most widely distributed books, the Bhagavad-gita, teaches that spiritual realization and self fulfillment are achieved through devotional service to God ("Intelligent persons who are endeavoring for liberation from old age and death take refuge in Me in devotional service.") (Id., 7.30) It is

further described that the highest and most effective means of service is to preach and distribute the message of the Gita to others: ("For anyone who explains this supreme secret to the devotees, devotional service is guaranteed and at the end he will come back to Me. There is no servant in this world more dear to Me than he, nor will there ever be one more dear." Id., 18.68-69). Therefore, the mainstay of an ISKCON member's spiritual advancement is his personal participation in efforts to propagate Krishna consciousness. In ISKCON's early days this principle manifested in the street chanting parties and distribution of sanctified foodstuffs familiar in all American cities. As fast as Srila Probhupada finished translating books from the original Sanskrit and Bengali texts however they were published and distributed by his disciples and followers

as their principle mission. Since Macmillan Company first published the Bhagavad-gita As It Is in English in 1968, Srila Prabhupada's books have been distributed in thirty-six languages, including Russian, Chinese and Hebrew. He taught that the most effective means of propagating Krishna consciousness was through book distribution. As expressed in 1935 by his spiritual predecessor Srila Bhaktisiddhanta, "It would be better to take the marble from the temple walls to secure money ... to print books." Goswami, A Lifetime in Preparation, 91 (1980). Therefore, Srila Prabhupada himself wrote, "One should engage in practical service to the Lord. In our Krishna consciousness movement all our activities are concentrated upon distribution of Krishna literature." (Srimad Bhagavatam, 10.2.37 purport).

In addition to developing personal

spiritual faith and realization, book distribution is the method for recruiting new members for the society. The often hurried pace of life in the public places or forums of modern America does not always lend itself to the thoughtful, open-minded consideration that is required to understand the philosophy of Krishna consciousness. But, a book may be tucked under the arm to be digested at a later more opportune time, often in the quiet and privacy of the home.

Although ISKCON members do not expect large segments of the American public to join their ranks in the immediate future, they do hope to make a significant contribution to American culture by their book distribution. Indeed, they see the principles contained in the Bhagavad-gita as intensely relevant to the problems faced by modern society.

With the progression of the age of Kali (the present age) people are becoming very proud, and attached to women and intoxication. All these habits, or so-called advancement of civilization, are the root cause of all irreligiosities, and, therefore, it is not possible to check crime, corruption, bribery, nepotism, etc. Man cannot check all these evils simply by statutory acts and police vigilance, but he can cure the disease of the mind by the proper medicine, namely advocating the principles of brahminical culture, i.e., austerity, cleanliness, truthfulness, and mercy. Modern civilization and economic development are creating a new situation of poverty and scarcity. If the leaders and rich men of society spend fifty percent of the accumulated wealth mercifully for the misled mass of people and educate them in God consciousness, certainly the age of Kali (quarrel) will be defeated in its attempt to entrap the conditioned souls. We must always remember that false pride, or too high an estimation of one's own value, undue attachment to women, and intoxication will

> divert human civilization from the path of peace in the world. The preaching of the Bhagavatam principles will automatically render all men austere, clean both inside and outside, merciful to the suffering, and truthful in daily behavior. That is the way of correcting the flaws of human society, which are very prominently exhibited at the present moment. (Srimad Bhagavatam 1.17.24 purport).

Book distribution provides the spiritual inspiration and the method of propagation of the International Society for Krishna Consciousness. To suppress it, therefore, as does the Minnesota statute, severely frustrates the legitimate missionary efforts of ISKCON and thus circumvents the protection that such activities are afforded under the First Amendment.

II

RULE 6.05 UNDERMINES THE FUNDAMENTAL VALUES OF THE FIRST AMENDMENT

A core concept of First Amendment protections is that "[s]peech is often provocative and challenging," and "may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea." Terminiello v. Chicago, 337 U.S. 1, 4 (1949). In the last decade, an influx of new religious movements has resulted in a classic ideological struggle between traditional values and beliefs of a resistant Judeo-Christian society, and new ideas pressing for acceptance.[1] The

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[1] A.L. Basham, a leading authority on India and its religions, recently stated that the ISKCON movement has spread to the West without significantly diluting its Eastern heritage. "Here, for the first time since the days of the Roman Empire, an Asian religion new to the West is being practiced openly in the streets of the great cities of the Western world by people

authors of the First Amendment, however, "knew, that unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance." Martin v. Struthers, 319 U.S. 141, 143 (1943).

The problem of maintaining a meaningful system of freedom of expression is one of the most complex and important that any society has to face. T. Emerson, Toward A Theory Of The First Amendment, 19 (1966). In this respect, Rule 6.05 is more than a simple time, place and manner regulation. To the contrary, the Minnesota "booth rule" represents the most serious challenge to religious freedom since the variety of restraints imposed

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of Western and Judeo-Christian background." Los Angeles Times, Feb. 15, 1981, 1 at col. 1.

upon the Jehovah's witnesses in the 1930's and 1940's. Indeed, the "booth rule" strikes at the heart of ISKCON's religious expression, and threatens its very existence. As aptly stated by Justice Douglas, "The way of the religious dissenter has long been hard. But if the formula of this type of ordinance is approved, a new device for the suppression of religious minorities will have been found." Murdock v. Pennsylvania, 319 U.S. 105, 115 (1943).

In order to protect against this, the First Amendment has traditionally occupied a "preferred" position in the American system of free expression. Marsh v. Alabama, 326 U.S. 501, 509 (1946). As the foundation of democratic society, it provides the milieu in which individual liberties may be exercised. Additionally, it represents the major distinction between free societies such as ours and

well-known totalitarian regimes that seek to suppress individual liberties and religious expression to remote times, obscure places, and ineffectual methods.

"The Free Exercise Clause ... withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority." Abbington School District v. Schemmp, 374 U.S. 203, 222-23 (1963).

Rule 6.05 is a violation of the Free Exercise Clause of the First Amendment. Restricting ISKCON's legitimate missionary activities to a booth is an unacceptable interference with ISKCON's ability to adequately express its religious views through the dissemination of religious literature.

> Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as safe haven for crackpots. Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 513 (1969).

ISKCON's activities are intimately connected to the core values underlying the First Amendment and must be protected. As noted by Professor Cox, "Liberty of Expression benefits more than the speaker. The hearer and reader suffer a violation of their spiritual liberty if they are denied access to the ideas of others. When first considered, freedom of speech and press chiefly meant the opportunity to hear and read the word of God and thus to discover the road to salvation." Cox, Foreward: Freedom of Expression in the Burger Court,

94 Har. L. Rev. 1 (1980).

The First Amendment was designed to secure "the autonomous control over the development and expression of one's intellect, interests, tastes, and personality." Griswold v. Connecticut, 381 U.S. 479, 482-83 (1965). By distributing religious and philosophical literature to receptive persons, ISKCON's activities are promoting this essential purpose by assisting these persons in the formulation and development of their beliefs, opinions, and personalities. The "booth rule," however, frustrates this purpose by restricting the public's access to ISKCON's stock of ideas and beliefs, and thus "invades the sphere of intellectual spirit which it is the purpose of the First Amendment to our Constitution to reserve from official control." West Virginia State Board of Education v. Barnette, 319

U.S. 624, 642 (1943).

Without the right to express one's views and beliefs, the right to formulate them is of little value. Indeed, it is impossible to separate formulation from expression, as expression is an integrated part of the development of ideas, of mental exploration, and of affirmation and realization of the self. What Milton said of licensing the press is thus equally true of the Minnesota rule: it is "the greatest displeasure and indignity to a free and knowing spirit that can be put upon him." Milton, Areopagitica--A Speech for the Liberty of Unlicensed Printing (1644).

The "booth rule" also prevents ISKCON's teachings and beliefs from reaching the "market place of ideas." Human judgment is extremely delicate. In the course of the decisionmaking process, it may be easily detracted by emotion, prejudice, or

personal interest. Indeed, freedom of inquiry and liberty of expression are essential to this process, for only through endless competition and debate can error be exposed, truth emerge, and progress be made.

The rule affording the widest possible latitude in promoting the core values underlying the First Amendment should be adopted by the Court. As stated by Justice Murphy, "Repression has no place in this country. It is our proud achievement to have demonstrated that unity and strength are best accomplished, not by enforced orthodoxy of views, but by diversity of opinion through the fullest possible measure of freedom of conscience and thought." Martin, 319 U.S. at 150 (Murphy, J., concurring).

The crucial question this Court must ask then, is "whether or not there has been

a real abridgement of speech" and religion. Kovacs v. Cooper, 336 U.S. 77, 85 (1949). Although First Amendment rights, even when religiously based, "do not free individuals from the responsibility to conduct themselves obediently to laws which are imperatively necessary to protect society as a whole from grave and pressingly imminent dangers or which, without any general prohibition, merely regulate time, place or manner of religious activity," Barnette, 319 U.S. at 643-44 (Black and Douglas, J.J., concurring), "in every case the power to regulate must be so exercised as not, in attaining a permissable end, unduly to infringe the protected freedom." Cantwell v. Connecticut, 310 U.S. 296, 304 (1940).

Rule 6.05, however, clearly violates this principle by substantially abridging ISKCON's ability to disseminate its religious literature throughout the public,

non-rented portions of the fairgrounds. By allowing speech but not the distribution of literature or solicitation of funds, it attempts to regulate the "extent," or content of ISKCON's religious expression. Unlike the decibel restriction upheld in Kovacs, which limited the manner of operating a sound truck, the area limitations placed upon ISKCON restrict the extent of the reasonable use of a protected means of communication. By saying that ISKCON's activities cannot extend beyond the reasonably limited confines of a booth, Rule 6.05 constitutes not only a time, place, and manner regulation, but a direct "quantitative restriction on religious communication and association."

The "booth rule," therefore, is not a regulation, but a restriction which interferes with protected freedoms. Although "[a]ll regulatory enactments are

prohibitory as far as their restrictions are concerned," Kovacs, 336 U.S. at 85, Rule 6.05's exploitation of this regulative "loophole" makes it inherently dangerous to the future exercise of First Amendment rights. Indeed,

> [a] system of free expression can be successful only when it rests upon the strongest possible commitment to the positive right and the narrowest basis for exceptions. And any such exceptions must be clear cut, precise and readily controlled. Otherwise the forces that press toward restriction will break through the openings, and freedom of expression will become the exception and suppression the rule. Emerson, supra, at 19.

III

RULE 6.05 APPLIES AN ERRONEOUS "SPEECH-CONDUCT" STANDARD TO THE VARIOUS ASPECTS OF ISKCON'S MISSIONARY ACTIVITIES, AND IS THEREFORE UNCONSTITUTIONAL

A. Rule 6.05 is a "Green River" Ordinance Erroneously Applied to Book Distribution And The Solicitation of Funds.

By attempting to apply a "Green River" type ordinance, originally designed to regulate commercial peddlers, hawkers, and solicitors, to the distribution and solicitation of religious literature, Rule 6.05 makes an impermissable "speech-conduct" distinction foreclosed by decisions of this Court. Indeed, "[a]lthough a municipality may enact regulations in the interest of the public safety, health, welfare or convenience, these may not abridge the individual liberties secured by the Constitution to those who wish to speak, write, print or circulate information or opinion." Schneider v.

State, 308 U.S. 147, 160 (1939).

While a city may thus prevent people from blocking sidewalks, obstructing traffic, littering streets, committing assaults, or engaging in countless other forms of antisocial conduct, Coates v. Cincinnatti, 402 U.S. 611, 614 (1971), it may only do so "through the enactment and enforcement of ordinances directed with reasonable specificity toward the conduct to be prohibited." Id. (emphasis added)

Rule 6.05, however, by prohibiting members of ISKCON from distributing their religious literature and receiving contributions throughout the public, non-rented portions of the fairgrounds is aimed specifically at protected speech and religion, rather than at the legitimate interests of the State in regulating ordinary commercial activities or other forms of "antisocial behavior."

B. Book Distribution Is Expression

Moreover, by distinguishing between the distribution of religious literature and oral speech, the Rule creates an impermissable distinction between two equally protected forms of expression.

In Hague v. Committee for Industrial Organization, 307 U.S. 496 (1939), Justice Roberts declared that the right to peaceably assemble for the purpose of expressing one's views, "whether orally or in writing, is a privilege inherent in citizenship of the United States, which the Fourteenth Amendment protects." Id. at 512 (emphasis added). In Lovelle v. Griffin, 303 U.S. 444 (1938), Chief Justice Hughes stated that "Liberty of circulation is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." id. at 452 quoting Ex parte

Jackson, 96 U.S. 727, 733 (1878).

The right to distribute all forms of religious literature has been vigorously upheld by this Court. Indeed, its distribution may not be prohibited on the streets, Jamison v. Texas, 318 U.S. 413, 416 (1943), or from door to door. Martin, supra. It may not be conditioned upon the granting of a license which is subject to the unfettered discretion of municipal officials, Largent v. Texas, 318 U.S. 418, 422 (1943); Tucker v. Texas, 326 U.S. 517, 519-20 (1946); Hynes v. Mayor of Oradell, 425 U.S. 610, 622 (1976), or upon the payment of a license tax for the privilege of doing so. Murdock, supra; Follette v. Town of McCormick, 321 U.S. 573 (1944). Indeed, the hand to hand distribution of religious literature as practiced by ISKCON is:

> more than preaching; it is more than distribution of religious literature. It is a combination of both.

> Its purpose is an evangelical as the revival meeting. This form of religious activity occupies the same high estate under the First Amendment as do worship in the church and preaching from the pulpits. It has the same claim to protection as the more orthodox and conventional exercises of religion. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press. Murdock, 319 U.S. at 109.

Rule 6.05, therefore, makes an unconstitutional distinction between oral communication of religious ideas, and written communication of religious ideas. By allowing members of ISKCON to prosyltize throughout the non-rented, public portion of the Fair, but not to distribute their literature except from the confines of a booth, Rule 6.05 categorizes literature distribution as the type of symbolic conduct discussed in Cox v. Louisiana, 379 U.S. 536, 554

(1965). In Cox, however, the Court explicitly contrasted picketing and parading with a newspaper comment and a telegram by a citizen to a public official. The parading and picketing activities were said to constitute conduct "intertwined with expression and association," while the newspaper comment and telegram were described as a "pure form of expression" involving "free speech alone" rather than "expression mixed with particular conduct." Id. at 563-64.

The distribution of religious literature, therefore, is not symbolic conduct. To the contrary, it is "speech pure" in written form. By applying one standard of protection to oral communication, and another standard to written communication, Rule 6.05 creates an unconstitutional distinction between two equally protected forms of expression.

This proposition was recently affirmed with respect to a "belief-conduct" distinction in Wisconsin v. Yoder, 406 U.S. 205 (1972). In rejecting the State's assertion that certain educational practices of the Amish were outside the protection of the First Amendment, the Court stated that while "[i]t is true that activities of individuals, even when religiously based, are often subject to regulation by the States ... there are some areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability." Id. at 220.

C. The Collection of Funds in Conjunction With the Distribution Of Religious Literature Is Also Fully Protected By the First Amendment.

Nor is the solicitation of contributions in conjunction with distribution entitled to any less

protection than speech and writing. To the contrary, this issue is directly controlled by Murdock. As in Murdock, the Krishnas take literally the Sanskrit command of their scriptures - "Yāre dekha, tāre kaha 'krsna-upadeśa/āmāra ajnāya guru hana tāra ei deśa: Instruct everyone to follow the orders of Lord Krishna as they are given in the Bhagavad-gita and Srimad Bhagawatam ... and in this way try to liberate everyone in this land." Chaitanya Charitamrita, Madhya, 7.128.

In addition, the Krishnas have a practice in distributing their literature to request a contribution to cover the cost of the literature and help support the activities of the religion. Rule 6.05, however, attempts to restrict this practice to a small booth in the same way it restricts the sale of hot dogs, balloons, stuffed animals, and frivolous games.

Under no circumstances, however, may the State "prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because they invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes." Jamison, 318 U.S. at 417.

The State, however, attempts to classify the donative transaction as a "sale" rather than a "contribution" in order to justify its restriction. But even accepting, arguendo, that this is true, "the mere fact that religious literature is 'sold' rather than 'donated' does not transform evengelism into a commercial enterprise." Murdock, 319 U.S. at 111, and this is true even when applied to a resident preacher who makes his living by the "sale" of religious books.

Follett, 321 U.S. at 576-77. "If it did, then the passing of the collection plate in church would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs are not to be guaged by standards governing retailers or wholesalers of books." Murdock, 319 U.S. at 111.

Expression does not lose its First Amendment protection when performed in conjunction with a request for donations. "Prior authorities ... clearly establish that charitable appeals for funds ... involve a variety of speech interests -- communication of information, the dissemination and propagation of views and ideas, and the advocacy of cause -- that are within the protection of the First Amendment." Village of Schaumberg v. Citizens For A Better Environment, 444 U.S. 620, 632 (1980). See also Buckley v.

Valeo, 424 U.S. 1 (1965).

By restricting the amount of funds that ISKCON will thus be able to collect, the "booth rule" will have a substantial impact on the quality of ISKCON's speech and religious freedom. "The distribution of the humblest handbill or leaflet entails printing paper, and circulation costs." Id. at 19. The limitation of the "booth rule," therefore, represents a "substantial rather than merely theoretical restraint... on the quantity and diversity of...speech," and should be rejected. Id. at 20.

IV

RULE 6.05 UNCONSTITUTIONALLY DENIES ACCESS TO SPEECH OPPORTUNITY

A. A speaker's minimum access to a public forum is a guaranteed constitutional right.

The Court in Hague stated that:

> Wherever the title of the streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from the most ancient times, been part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute but relative, and must be exercised in subordination to the general comfort and convenience, and in good consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied. Hague,

307 U.S. at 515-516 (emphasis added).

This Court has consistently recognized the public's right to a suitable outlet for the communication of ideas to be a fundamental principle underlying its public forum decisions.[2] See, e.g., Schneider, supra (a municipality may not prohibit the distribution of leaflets on the public streets), Jamison, supra (accepting contributions for religious literature does not alter a colporteur's right of access to public sidewalks), and Martin, supra (striking a general prohibition on door to door canvassing for literature distribution). In Amalgamated Food Employees Local 590 v.

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[2]The Court has held that the public facility sought to be used must not be principally meant for an inconsistent use. See, e.g., Adderley v. Florida, 385 U.S. 39 (1966) and Cox v. Louisiana, supra. The walkways etc. of a public fair are not specialized facilities and, thus, those desiring access in the instant case are, "[not] seeking to use a facility primarily serving a competing use." Southeastern Promotions v. Conrad, 420 U.S. 546, 555 (1975).

Logan Valley Plaza, Inc., 391 U.S. 308 (1968), the Court said, "title to municipal property is, standing alone, an insufficient basis for prohibiting all entry onto such property for the purpose of distributing printed matter." Id. at 316. And, while Logan Valley's allowing picketing on private property is no longer authoritative, its viability as to the public's right of access to more traditional forums remains intact. Thus, by excluding literature distribution from the public areas of the Minnesota Fair, Rule 6.05 effectively denies ISKCON members right of access to an appropriate public forum for the purpose of First Amendment expression and is, therefore, unconstitutional.

B. Exclusion of access to an appropriate public forum is unconstitutional even though it is non-discriminatory.

The Fair's attempt to justify the exclusion of ISKCON's literature

distribution on the grounds that all First Amendment literature distribution is similarly excluded cannot pass constitutional muster. Although any regulation of First Amendment activities must be even-handed and free of content related value judgments, Southeastern Promotions, supra, it does not follow that a total ban on all freedom of expression is permissible. "[T]he Struthers ordinance prohibits door to door canvassing of any kind, no matter what its character and purpose may be, if attended by the distribution of written or printed matter in the form of a circular or pamphlet. I do not believe that this outright prohibition is warranted." (Murphy, J., concurring), Martin, 319 U.S. at 151. If simply by excluding all persons equally, governmental authorities may exclude protected expression from a public forum, soon all public forums will be effectively

closed to meaningful communication, and the open society will exist no longer. See generally, Kalven, The Concept of the Public Forum: Cox v. Louisiana, 1965 S. Ct. Rev. 1 (1965), and Note, The Public Forum: Minimum Access, Equal Access, and the First Amendment, 28 Stan. L. Rev. 117 (1975).

C. A speaker's chosen channel of communication may not be denied on the grounds that an alternative forum is available.

The alternative forums of booths and speech unconnected with literature distribution are available does not justify the booth regulation. "One is not to have the exercise of his liberty of expression abridged on the plea that it may be exercised in some other place." Schneider, 308 U.S. at 163. "Traditional First Amendment doctrine has long held that the existence of other channels of communication cannot be used as a justification to close

the particular means of expression that the speaker or listener has chosen." Emerson, First Amendment Doctrine and the Burger Court, 68 Calif. L. Rev. 422, 454 (1980).

D. Rule 6.05 denies ISKCON's right to effectively reach an audience.

In Saia v. New York, 334 U.S. 558 (1948), the Court held a municipality could not arbitrarily deny a speaker the right to effectively communicate with an audience through a chosen channel of expression on the plea that a less effective outlet was available. In Kovacs, supra, the Court, although recognizing a municipality's interest in protecting unwilling listeners against unwarranted intrusion,[3] confirmed that a speaker has a right to, "reach the minds of willing listeners and to do so

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[3] In the instant case, there is no question of a captive audience. ISKCON distributors must not continue to solicit persons who have indicated their unwillingness to hear ISKCON's message. Should the distributor do so, he may be prosecuted under a separate ordinance.

there must be an opportunity to win their attention." Id. at 87 (emphasis added). See also Martin, supra (guaranteeing distributors of religious literature right of access to an audience in residential areas). By confining ISKCON literature distribution to a rented booth, Rule 6.05 denies ISKCON members their rightful audience, i.e., those fairgoers willing to listen to their message and accept their literature. To reach such willing persons ISKCON distributors must be allowed to freely canvass and solicit. It is rare indeed for those persons who are the objects of a preaching or communications effort to unilaterally initiate the encounter. And yet, this is the only opportunity available to ISKCON under Rule 6.05. One's freedom of speech should not be limited to the audience of those who decide to approach him. Indeed, for minority and unpopular views, such a

construction of the First Amendment would render its protections illusory.

E. Selling of products and the expression of ideas are not constitutionally equal.

Finally, the State urges that because it may in the interest of public order, require ordinary commercial vendors to sell their wares only from rented booths, the same rule must be applied to ISKCON's rights of First Amendment expression. This position, however, fundamentally confuses the meanings of the First and Fourteenth Amendments. The very purpose of the First Amendment is to elevate certain core rights to a preferred status when coming into conflict with other interests. Nothing in the Constitution guarantees a merchant the right to sell his wares in a public place.

Although this Court applied a limited form of protection to commercial speech in Virginia Board of Pharmacy v. Virginia Consumer Council, 425 U.S. 748 (1976), the

selling of wares by vendors is a commercial transaction and not the commercial expression of fact protected in that case. The literatures distributed by ISKCON members are, however, in themselves ideas or vehicles of religious expression. Surely, such a distinction may be constitutionally recognized in granting different levels of access to an appropriate forum for First Amendment expression.

Rule 6.05's unwarranted blanket prohibition on all literature distribution outside rented booths cannot be justified on the grounds that it is equally applied, and it is, therefore, an unconstitutional denial of the public's right of access to an appropriate First Amendment forum.

V

THE IMPACT OF RULE 6.05 UPON ISKCON'S CONSTITUTIONALLY GUARANTEED RIGHTS OF FREEDOM OF EXPRESSION IS SEVERE

"In every case ... where legislative abridgement of fundamental rights is asserted, the courts should be astute to examine the impact of the challenged legislation." Schneider, supra at 161. "The question in a particular case is whether that governmental control is exerted so as not to deny or unwarrantedly abridge ... the communication of thought and discussion of public questions immemorially associated with resort to public places." Cox v. New Hampshire, 312 U.S. 569 (1941). In the instant case, Rule 6.05 totally frustrates ISKCON's rights of free religious expression by confining literature distribution to a small booth.

Although Rule 6.05 allows speech unaccompanied by distribution throughout the fair, this concession is meaningless

for ISKCON's purposes. ISKCON does not consider the spoken word an effective means for communicating its message, particularly in the context of a state fair. And, this Court has repeatedly recognized that perrogative by protecting the use of the printed word for First Amendment expression. See, e.g., Schneider, supra.

Furthermore, although Rule 6.05's confinement of solicitation to a booth may pose no undue burden upon the fair's commercial vendors, its effects upon ISKCON's religious expression is devastating. The public expects to encounter various games, exhibits, and food stands at the fair and, thus, readily patronizes them. For a member of a misunderstood religious minority, however, the situation is entirely different. His message and demeanor often appear strange and unfamiliar. Social pressure and shyness generally inhibit the public from

talking with him even when they are so inclined. Such obstacles may be overcome by an enthusiastic distributor, but if he is confined to a booth and forbidden to peripetetically canvass, the situation becomes impossible. Many of the fairgoers will never even pass the ISKCON booth and, of those who do, only the most sincere or curious will actually be bold enough to stop. Moreover, the psychological impact of the booth restriction is to severely chill the enthusiasm of ISKCON distributors to communicate their ideas to the public.

> In order to understand the impact of the place restriction, it is necessary to appreciate the nature of that religion. The devotees of this sect of Hinduism carry a duty to perform an evangelical ritual called 'sankirtan.' It consists of spreading the 'truth' and soliciting. It cannot be exercised with any degree of effectiveness from a 30-foot booth - not when the

> fairgrounds sprawl over approximately 250 acres. The inescapable fact is that the impact of the booth restriction upon the protected activities of ISKCON devotees is markedly different from its impact on other commercial vendors. International Society for Krishna Consciousness v. State Fair of Texas, 461 F. Supp. 719, 723 (N.D. Tex. 1978).

The Krishna religion imposes upon its adherants the duty to distribute literature. The Minnesota booth rule renders such distribution practically impossible. Upholding the rule will mean that ISKCON's free expression and religious practice will be virtually extinguished at the Minnesota fair. Furthermore, it is certain that, following such a decision by this Court, similar regulations will be enacted in fairs, airports, and other public forums around the country. This would, in turn, create serious repercussions upon ISKCON's ability to

communicate with the public, its financial solvency, and the morale of its members. A regulatory rule such as 6.05 having such a devastating impact on protected expression is unconstitutional without the showing of a critical governmental interest.

VI

THE MINNESOTA STATE FAIR HAS NOT SUSTAINED ITS BURDEN OF DEMONSTRATING AN OVER-RIDING INTEREST SUFFICIENT TO JUSTIFY RULE 6.05

Rule 6.05 is not the type of reasonable time, place and manner regulation traditionally upheld by this court, but is, rather, an impermissible denial, "in the guise of regulation." Hague, 307 U.S. at 516. Although this Court has consistently allowed a governmental entity to impose reasonable regulations upon First Amendment expression, the Constitutional limit of such regulations has always been very narrowly drawn. Cantwell, 310 U.S. at 305. Indeed, those regulations upheld have been almost exclusively innocuous reguirements of registration and identification which (unlike the Minnesota rule) do not severely impair the protected expression. Thomas v. Collins, 323 U.S. 516, 540-41 (1945). See generally Jones,

Solicitations-Charitable and Religious, 31 Baylor L. Rev. 53, 55-56 (1979). The state Fair is attempting to accomplish by its booth rule that which this Court forbid in Jamison v. Texas, supra, at 417. The "state may not prevent the collection of funds for a religious purpose by unreasonably obstructing or denying their collection." Id. (emphasis added) "Regulatory measures ... no matter how sophisticated, cannot be employed in purpose or in effect to stiffle, penalize, or curb the exercise of First Amendment rights." Louisiana ex. rel. Gremillion v. N.A.A.C.P., 366 U.S. 293, 297 (1961).

Although Minnesota asserts a compelling interest in minimizing congestion, it has been unable to offer any factual evidence to support that claim. Furthermore, considerably less restrictive measures could easily be taken by the fair if it really wanted to minimize congestion.

The Minnesota Fair is encountering no more serious traffic problem than is found during rush hours on any downtown sidewalk in large metropolitan areas of this country where it has been found, "as long as sufficient space is left for the normal flow of pedestrians other uses have very little impact on pedestrian uses." Philadelphia News and Borough Council, 381 F. Supp. 228, 243 (E.D. Pa. 1974).

As for fraud, the government's "legitimate interest in preventing fraud can be better served by measures less intrusive than a direct prohibition on solicitation. Fraudulent misrepresentation can be prohibited and the penal laws used to punish such conduct directly." Village of Schaumburg, 444 U.S. at 637. The state fair contends, however, that these measures are too difficult for it to accomplish administratively.

> Prohibition may be more convenient to the law maker, and easier to fasion than a regulatory measure...But... [f]reedom of religion has a higher dignity under the Constitution than municipal or personal convenience. In these days free men have no loftier responsibility than the preservation of that freedom. A nation dedicated to that ideal will not suffer but will prosper in its observance. (Murphy, J., concurring) Martin, 319 U.S. at 151-152.

VII

RULE 6.05 DISCRIMINATES ON THE BASIS OF CONTENT, AND THUS VIOLATES THE EQUAL PROTECTION CLAUSE

Rule 6.05 is a striking example of majoritarian censorship of minority religious views. Because it impacts disproportionately on the views of minority religions, it represents a content-based restriction rather than a simple regulation of time, place and manner. "A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the exercise of religion." Yoder, 406 U.S. at 220. See also, Griggs v. Duke Power Co., 401 U.S. 424 (1971).

Because the hand distribution of religious literature is "an age-old form of missionary evangelism ... that has been a potent force in various religious movements down through the years," it is

imperative that ISKCON be allowed to distribute its literature throughout the non-rented, public areas of the Fair. Especially at the present time, the increasing concentration of ownership of conventional channels of communication has made it exceedingly difficult for diverse points of view to reach the "market place for ideas." See, e.g., Kovacs, 336 U.S. at 102 (Black, J., dissenting).

Under these circumstances, access to some inexpensive means of effective communication is essential.

> For many persons who do not have easy access to television, radio, the major newspapers, and the other forms of mass media, the only way they can express themselves to a broad range of citizens on issues of general concern is to picket, handbill, or to utilize other free or relatively inexpensive means of communication. The only hope these people have to be able to communicate effectively is to be permitted

> to speak in those areas in which most of their fellow citizens can be found. Lloyd Corp., Ltd. v. Tanner, 407 U.S. 551, 580-81 (Marshall, J., dissenting).

This proposition is especially true with respect to ISKCON. ISKCON is frequently subjected to critical attacks by both the media and other groups.[4] In the course of a free and open democratic society, such attacks are natural and expected. However, in light of recent decisions by this Court holding that licensed broadcasters are not required to sell editorial time, Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94 (1973), and that newspapers are not obligated to provide

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[4] See, e.g., Delgado, Religious Totalism: Gentle And Ungentle Persuasion Under The First Amendment, 51 S. Cal. L. Rev. 1 (1977) (advocating the removal and "deprogramming" of members of unpopular minority religions).

reply space to individuals who are attacked or criticized by the press, Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974), the ability of those attacked to effectively defend themselves is significantly reduced.

The hand to hand distribution of religious literature, therefore, is "essential to the poorly financed causes of little people." Martin, 319 U.S. at 146. "Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way," Murdock, 319 U.S. at 111, or those "with a long purse." Follette, 321 U.S. at 576.

Moreover, the Fair is particularly appropriate for this activity. "The right of access to places traditionally open to the public ... may be seen as assumed by the amalgam of the First Amendment guarantees of speech and press; and their

affinity to the right of assembly is not without relevance." Richmond Newspapers, Inc. v. Virginia, ___ U.S. ___, 100 S. Ct. 2814, 2828 (1980) (emphasis added).

Fairs, of course, have historically been open to the public for a wide variety of purposes. "A fair is almost by definition a congeries of hawkers, vendors of wares and services, and perveyors of ideas, commercial esthetic and intellectual." ISKCON v. State Fair, 461 F. Supp. at 721. Large numbers of people from diverse backgrounds are invited to attend through wide-scale advertising and media announcements. Numerous displays and presentations are designed to educate and inform the public about a variety of subjects which include "agriculture, horticulture, stockbreeding, manufacturers, and the mining, mechanical and industrial arts and sciences." Minn. Stat. §37.15 (1980).

The Fair, therefore, is suitable and compatible with the expression of ISKCON's religious beliefs. Designed and dedicated to a variety of communicative subjects, ISKCON's activities are perfectly compatible with the normal activities of the Fair. See: Grayned v. City of Rockford, 408 U.S. 104, 116 (1972); Southeastern Promotions, 420 U.S. at 556.

Moreover, the State has failed to show that any "substantial" or "material" disruption of the Fair will occur by allowing ISKCON to perform the peripatetic distribution of religious literature in the non-rented public portions of the Fair, or that ISKCON's activities will unreasonably impair the value or use of the State's property as a Fair. See: Pruneyard Shopping Center v. Robins, ___ U.S. ___, 100 S. Ct. 2035, 2042 (1980). To the contrary, any disturbance to the Fair caused by ISKCON's activities

will be of no more severity than the disruption caused by a crying child, casual conversation, or idle conversation of food by fairgoers in similar areas of the Fair.

On the other hand, the Fair is of special importance to ISKCON's activities. Large numbers of people from diverse backgrounds constitute a reachable, receptive audience not approachable in other areas, or by door to door visitations. As a result, the chances of ISKCON attracting new members and sympathizers is greatly enhanced by access to the Fair.

Rule 6.05, however, denies ISKCON this fundamental right, and thus discriminates against minority religions who lack access to the conventional channels of communication available to established, well-financed groups and organizations. "Laws which hamper the free use of some instruments of

communication thereby favor competing channels. Thus unless constitutionally prohibited, laws like this ... can give an overwhelming influence to views of owners of legally favored instruments of communication." Kovacs, 336 U.S. at 102 (Black, J., dissenting). Indeed, the vitality of this principle was recently confirmed in a 1978 speech by noted author and dissident Alexander Solzhenitsyn at Harvard University:

> Without any censorship in the West, fashionable trends of thought and ideas are fastidiously separated from those which are not fashionable and the latter, without ever being forbidden, have little chance of finding their way into periodicals or books or be heard in colleges. Your scholars are free in the legal sense, but they are hemmed in by the prevailing fad. Solzhenitsyn. A World Split Apart, Vital Speeches of the Day, 678 (1978).

Rule 6.05, therefore, violates the First and Fourteenth Amendments to the

Constitution by impacting disproportionately against minority religious organizations such as ISKCON. Although financial need, standing alone, does not constitute a suspect class, see, e.g., San Antonio Ind. School Dist. v. Rodriguez, 411 U.S. 1 (1973); Harris v. McRae, ___ U.S. ___, 100 S. Ct. 2671 (1980), that situation is substantially altered when combined with an affirmative government "obstacle" such as the booth. See Harris, supra, at n.19; Maher v. Roe, 432 U.S. 464, 472 (1977).

In light of this concept, this Court should affirm the basic principles of the First Amendment and Free Expression, by holding that "beliefs ... which could easily be trod upon under the guise of 'police' or 'health' regulations reflecting the majorities views" will not be tolerated. Sherbert v. Verner, 374 U.S. 398, 411 (1963) (Douglas, J., concurring).

CONCLUSION

It is not unusual for movements of spiritual reform to be unpopular in their beginnings. People always resist fundamental changes in world view, although such is the price of progress in the search for truth. Still, to require that persons with spiritual inspiration wait passively until the public develops the initiative to inquire from them is far too much to ask. Members of ISKCON must be given the full opportunity to effectively communicate their ideas in appropriate public places.

Respectfully submitted,

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No. 80-795

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Petitioners,

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On Writ of Certiorari to the Supreme Court of the State of Minnesota

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AMICUS CURIAE BRIEF FOR COUNTY OF LOS ANGELES

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INTRODUCTION

The County of Los Angeles has a strong interest in this Court's determination of the degree of First Amendment protection which shall be accorded to interrelated activities of a religious group when those activities have free speech, religious and commercial aspects.

From the earliest history of this nation, it has been recognized that certain fundamental

liberties must be accorded unparalled protection from governmental interference. Among these are the right of free speech and free exercise of religion which are enshrined in the First Amendment. At the same time, however, it has been universally understood that such human activity exists on a continuum moving from the realm of pure speech or religious belief into the area of conduct which impinges to an ever increasing degree upon the lives and rights of other persons.

Thus, no one may contend that government can regulate in any way the private religious belief of any citizen no matter how bizarre or offensive it might appear to all others. Similarly, the right to communicate ideas to others is of paramount importance in the scheme of the First Amendment and is carefully guarded. Nevertheless, this Court has recognized that in certain instances, governmental regulation as to the time, place, and manner of such communication will be permitted upon a sufficient showing of government interest in such regulation.

In striking the proper balance this Court has weighed a number of factors: the nature of the First Amendment activity sought to be protected; whether it comprises pure speech, personal belief, or acts which impinge on the rights of other individuals or society generally; the nature of the governmental interest sought to be advanced; whether the governmental interference is prohibitory or merely regulatory; whether content of the First Amendment activity is sought to be controlled and whether a less restrictive means of regulation can accomplish an admittedly legitimate governmental purpose. As As the continuum of First Amendment activities moves away from pure speech, a decreasingly

strict level of scrutiny has been applied in order to validate the particular governmental activity under challenge.

During the past decade, the International Society for Krishna Consciousness [ISKCON] has repeatedly challenged various statutes and local ordinances which regulate the time, place, and manner in which First Amendment activites can be exercised. The basis for these challenges has traditionally been that the regulation directly limits ISKCON's practice of Sankirtan, its purportedly reglious ritual. In virtually every case, the posture of the litigation has been that the local government has stipulated for all purposes that Sankirtan in fact is a religious ritual thereby increasing considerably the burden the state must carry in order to uphold the validity of the regulation. Although the courts have uniformly noted certain problems in viewing Sankirtan as a purely religious ritual, they have observed that they were limited by the factual stipulations of the parties as to the religious nature of Sankirtan.

In apparently only a very few cases has there been a full trial on the merits in which the question of whether all aspects of Sankirtan validly constitute a religious ritual which is entitled to the highest caliber of First Amendment protection. ISKCON v. Barber, 77 CV (August 25, 1980 N.D.N.Y.), and ISKCON v. County of Los Angeles, 1/ 112 Cal. App. 3d

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1/ A petition for hearing by the California Supreme Court has been filed by ISKCON. By order of that Court the time for granting or denying that petition has been extended to March 23, 1981.

582 (1980).

In both of these cases, the Courts focused on the commercial aspects of certain Sankirtan activities. Similarly, the thoughtful dissent in the case at bench provided a balanced approach for a determination as to whether all aspects of Sankirtan should be swept under the umbrella of the First Amendment.

Although the Los Angeles case does not turn on First Amendment issues, the underlying question of prime importance here as well as in California is the same -- what activities of a religious group may be controlled to some degree by governmental regulation and what activities are completely protected from all interference.

In ISKCON v. County of Los Angeles, supra, the Society sued for a refund of taxes which had been assessed on certain real property it owns within the County, claiming that the property should rightfully be exempt from tax under California's Welfare Exemption, California Revenue and Taxation Code §214; California Constitution Article XIII, Section 4(b).[2/] The

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2/ Section 214 provides in part:

"214. Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations

(continued on p. 5)

property was used for ISKCON's book publishing and sales activities and to house approximately

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2/ Continued from p. 4)
organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if:

"(1) The owner is not organized or operated for profit, provided, that in the case of hospitals, such organization shall not be deemed to be organized or operated for profit, if during the immediate preceding fiscal year the excess of operating revenues, exclusive of gifts, endowments and grants-in-aid, over operating expenses shall not have exceeded a sum equivalent to 10 percent of such operating expenses. As used herein, operating expenses shall include depreciation based on cost of replacement and amortization of, and interest on, indebtedness:

"(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual;

"(3) The property is used for the actual operation of the exempt activity and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose;

"(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession;"

250 ISKCON devotees. ISKCON claimed that the use of the property for book publishing and sales is required by the tenets of its religion and therefore the property should be exempt from tax under Murdock v. Pennsylvania, 319 U.S. 105 (1943).

The California Court of Appeal rejected this argument stating:

> "[ISKCON'S] book publishing and incense businesses were both intentionally profitable and were essentially commercial in nature. Both made sales to the general public as well as to temples of the movement and presumably competed with businesses not enjoying the welfare excemption. The fact that the Society's net income from these businesses was devoted apparently entirely to its religious purposes did not make these uses of its property exempt under Revenue and Taxation Code, section 214, subdivision (3), as rewritten in 1953. [Citations omitted.]
>
> . . .
>
> "A commercial profit-making use of otherwise exempt property by an organization qualifying for a particular property tax exemption destroys its right to the exemption by such use, notwithstanding the fact that the net proceeds of such use are applied exclusively to exempt purposes."

The Court of Appeal also stated by way of footnote:

"Such non-exempt commercial or business use of real property by an exempt taxpayer destroys its exemption partially but not completely. It eliminate from the exemption only that portion of the real property actually devoted to a nonexempt use. In this manner we look at both sides of the coin -- the taxpayers excempt purpose in the commercial or business use and the nonexempt manner it has chosen to accomplish that purpose." n. 10

Thus the California Court of Appeal has evidenced a sliding scale approach in determining what protections should be accorded to various activities of a religious sect in the area of taxation.

Although there is no question that entitlement to a real property tax exemption presents a different legal issue from that addressed in the area of Free Speech, the two are related herein that ISKCON asserts the religious ritual of Sankirtan as a complete bar to all governmental inference -- from booth regulations to property tax. This Court having agreed to address the issue of Sankirtan, now has the opportunity to formulate the determinative principles for validation of governmental acts. Therefore, the County of Los Angeles seeks by this brief to provide an analysis of Sankirtan as a multifaceted activity whose differing aspects may validly be subject to varying degrees of regulations in conformity with the differing levels of governmental interest in such regulation.

Within the factual framework of the instant case, this Court now may define more clearly

appropriate guidelines for the balancing process.

QUESTION PRESENTED

Whether all aspects of a series of inter-related activities conducted by a legitimately organized religious group may be protected from governmental regulation when the activities consistently include not merely proselytization distribution of literature, and solicitation of funds but also large-scale, deception, fraudulent conduct, and commercial sales transactions?

SUMMARY OF ARGUMENT

1. Commercial sales transactions which include habitual fraudulent conduct are not entitled to a high degree of First Amendment protection merely because the transactions are claimed to be a religious ritual.

2. As activities move from the realm of pure speech or pure belief to the realm of commercial and fraudulent transactions, the degree of governmental interest which must be shown to validate regulation should simultaneously decrease.

ARGUMENT

I

COMMERCIAL SALES TRANSACTIONS WHICH INCLUDE HABITUAL FRAUDULENT CONDUCT ARE NOT ENTITLED TO A HIGH DEGREE OF FIRST AMENDMENT PROTECTION MERELY BECAUSE THE TRANSACTIONS ARE CLAIMED TO BE A RELIGIOUS RITUAL.

In addressing this contention, it is helpful to review the seminal case Murdock v. Pennsylvania, 319 U.S. 105 (1943) since ISKCON has repeatedly sought to characterize its numerous constitutional challenges to local ordinances as a continuation of the pioneering First Amendment efforts of the Jehovah's Witnesses. Such an examination will pinpoint the fundamental differences between the Jehovah's Witnesses activities and those of ISKCON.

Murdock involved a challenge to a license tax imposed upon all persons who canvassed door to door in the City of Jeannette, Pennsylvania. Petitioners in Murdock were Witnesses who distributed religious literature and requested donations for it; the donations were characterized by the Court as sales. Nevertheless it struck down the taxing ordinance holding it to be an impermissible violation of petitioners' right to free exercise of their religion. The Court directly addressed the issue of the nature of the exchange and acknowledged:

". . . the problem of drawing the line between a purely commercial activity and a religious one will at times be difficult. On this record it plainly cannot be said that petitioners were engaged in a commercial rather than a religious venture. It is a distortion of the facts of record to describe their activities as the occupation of selling books and pamphlets." 319 U.S. 105, 111.

Further, the Court based its decision upon the absence of challenge to the integrity of the colporteurs. It stated:

"The integrity of this conduct or behavior as a religious practice has not been challenged. Nor do we have presented any question as to the sincerity of petitioners in their religious beliefs and practices, however misguided they may be thought to be. Moreover, we do not intimate or suggest in respecting their sincerity that any conduct can be made a religious rite and by the zeal of the practitioners swept into the First Amendment. Reynolds v. United States, 98 U.S. 145, 161, 167, 25 L.Ed. 244, and Davis v. Beason, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637, denied any such claim to the practice of polygamy and bigamy. Other claims may well arise which deserve the same fate. We only hold that spreading one's religious beliefs or preaching the Gospel through distribution of religious

literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as the more orthodox types. The manner in which it is practied at times gives rise to special problems with which the police power of the states is competent to deal. [Citations omitted.] But that merely illustrates that the rights with which we are dealing are not absolutes. Schneider v. State, 308 U.S. 147, 160, 161, 60 S.Ct. 146, 150, 84 L.Ed. 155. We are concerned, however, in these cases merely with one narrow issue. There is presented for decision no question whatsoever concerning punishment for any alleged unlawful acts during the solicitation."

The County of Los Angeles submits that the activities of ISKCON are not analogous to the proselytizing activities examined in Murdock. 3/

ISKCON argues that the religious ritual of Sankirtan insulates it from any taint of commerciality. ISKCON alleges that Snkirtan requires the pure devotees to approach the public, discuss with them the doctrines of Krishna and to sell books and other

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3/ In this respect it should be noted that ISKCON in its Respondent's Brief in Opposition at p. 5 has noted that its challenges to state fair booth eregulations have involved indistinguishable facts. Thus the County of Los Angeles will address the various cases involving Sankirtan as comprising the same factual basis.

articles. Nevertheless, repeatedly, the reviewing courts have acknowledged that the devotees used fraudulent devices in order to sell their wares. Clearly, Murdock involved no fraudulent sales techniques. In contrast, ISKCON devotees consistently misrepresent their identity as well as the ultimate use to which donations will be put. They do so in order to more effectively elicit money from the public. Such deliberate fraudulent acts simply cannot be said to be a protected religious activity.

In fact, a recent decision has firmly ruled that the Sankirtan activities of ISKCON in selling its wares to the public, do not constitute the practice of a religious rite. In ISKCON v. Barber, 77 CV 328 (August 25, 1980 N.D.N.Y.), ISKCON sought to restrain administrators of the New York State Fair from enforcing "booth regulations" on the ground that requiring ISKCON to operate at the Fair from a booth as opposed to its practice of accosting persons in open areas pursuant to Sankirtan was a violation of free exercise rights guaranteed by the First Amendment. There too, ISKCON relied on Murdock. The court ruled that the regulations were valid and that the practice of Sankirtan was not a religious rite but rather a commercial activity. The Court gave a thorough treatment of the historical development of Sankirtan noting that although ISKCON claims its belief is centuries old, the organizational beginning in this country occurred in the 1960's. (Slip opinion p. 7.) The court noted that in its early development it was thought that religion should not be "aggressively proselytized throughout the general population" and that the more

religious Hindus did not practice Sankirtan nor was solicitation considered part of Sankirtan.

> "[Solicitation was rarely performed by the monks or the initiated faithful. Rather, this chore was shouldred by lay specialists who functioned as managers of the religion." (Id. 8.)

> "When approaching potential donors, these specialists were required to depend on 'true and gentle speech.' Moreover, they were immediately to identify their religious order and guru. Money could not be asked for directly, instead the specialist would ask only for a contribution of foods . . . or clothing. It was this fact that money was not asked for directly which separated those who were religious beggers from those who were not." (Id. 8-9.)

Nor could a prosepective doner be touched without permission. The traditional Sankirtan was a pure religious ritual set apart from solicitation of funds. The modern version of Sankirtan, however, has been expanded to include the solicitation of money. In fact the central theme of Sankirtan now is the collection of money from nonbelievers in order that they may be purged of their material possessions and thus become pure. In addition the court observed that it is unimportant to the Krishnas that nonbelievers understand the meaning of their donations or be involved in a religious discussion about Krishna. Purification comes directly from disengagement from material

possessions, that is money. Such methods as disguising a connection with ISKCON, shortchanging the public, misleading the public regarding the purpose of funds solicited were referenced by the Court in Barber and the record in ISKCON v. County of Los Angeles, 112 Cal. App. 3d 582 (1980) is replete with similar facts. Further, other lower court opinions have referred to the fraudulent conduct but, as stated, supra, have been limited by the factual stipulations which admitted the religious nature of Sankirtan without a trial on the merits as to this issue.

Perhaps the most significant aspect of Sankirtan noted by the Barber court in ruling it a commercial activity was succinctly stated:

> "One of the only things that the Kirshnas did not do at the State Fairs was to discuss their religion [with] fair goers. Despite the Krishna claims that Sankirtan is the means by which they spread the 'truth' of Krishna and gain converts, they did not appear to engage in any sort of religious discussion with the fair goers. At trial, each witness who was approached by the Krishnas and asked for money confirmed that the Krishnas made no mention of their religion at all. . . . This lack of knowledge can only be attributed to the fact that the Krishnas never explained their religious paraphernalia to the fair goers and rarely identified or explained their affiliation." (Slip opinion at 28-29.)

Finally, the Barber Court concluded:

"There is no question from the record in this case that the Krishnas are engaged in a widespread and systematic scheme of accosting, deceit, misrepresentation, and fraud on the public in their Sankirtan activities. The record shows patterns of deceptive practices identical in nature and practice throughout New York State, Massachusetts, and Maryland. Other cases involving the Krishnas have reported similar findings, though these courts did not delve into such incidents to the extent that was done in this case. (See Edward v. Maryland, No. 79-1545 (August 12, 1980) at p. 9 n. 2; ISKCON v. St. Fair of Tex. (N.D. Tex. 1978) 461 F.Supp. 719, 723-24.) Plaintiffs have made little, if any, attempt to control its members or to bring these incidents to a halt. Quite the contrary, the Krishnas have condoned such practices by using experienced 'thieves' to teach its newer members how to solicit money from the public in exactly the same way. Instead of removing individuals who are known to the Krishna Society as being repeat offenders or overly aggressive, the Krishnas have continued to accept the 'fruits' of such solicitation methods for its own commercial gain, all under the 'cloak' of being a religion." (Id. at 38-39.)

In ISKCON v. Kearnes, 454 F.Supp. 116 (E.D. Cal. 1978) the court addressed the issue of prior restraint on First Amendment activity. Although this case granted a preliminary injunction against the enforcement of a local ordinance requiring solicitors to obtain permits prior to engaging in solicitations, it must be noted that the injunction was granted at the pleading stage without a full trial on the merits. Even there, however, the court recognized "the problems created by fraudulent solicitations and the interest of the state in protecting its citizenry from their perpetration." In addition, the court delineated the problems prsented by prior restraint:

> "The problem of prediction is the key to the doctrine of prior restraint. . . . In most instances, however, one cannot know precisely what activity an individual will pursue. . . ."

The County of Los Angeles submits that within the framework of Sankirtan it has been demonstrated that devotees are counselled that use of deception is permissible because the object of Sankirtan is to separate materialistic individuals from their possessions by any means possible. See ISKCON v. Barber, supra, at 37-39. Fraudulent conduct can be predicted and, therefore, the problem posed by a prior restraint is diminished.

The courts look to whether a clear and present danger exists in order to support a prior restraint.

> "[T]he state must show a high probability that an individual is about to engage in proscribed speech, especially when the evil to be avoided is fraud, in order to support a system of prior restraint." ISKCON v. Kearnes, 454 F.Supp. 116 (E.D. Cal. 1978).

In Barber, the trial court had ample facts to demonstrate that fraud was going to be committed. Similarly in the instant case there were over 200 complaints concerning devotees' misconduct during the 1977 State Fair.

It is peculiarly ironic to note ISKCON'S position in this case in comparison with, for example, Jehovah's Witnesses. The latter group sought freedom to express particular ideas which other members of society might not approve - nevertheless the thrust was in the direction of communication of their message. In contrast, it is the practice of ISKCON'S devotees to deceive the public as to their religious affiliation. As pointed out in Barber it is not necessary for the uninitiated to know or understand the tenets of ISKCON, the mere removal of material possessions accomplishes purification. Thus, ISKCON seeks to bring non-communication within the ambit of the First Amendment.

There is no reason to protect such activity at all much less to accord it the highly protected status sought here by ISKCON.

II

AS ACTIVITIES MOVE FROM THE REALM OF PURE SPEECH OR PURE BELIEF TO THE REALM OF COMMERCIAL AND FRAUDULENT TRANSACTIONS, THE DEGREE OF GOVERNMENTAL INTEREST WHICH MUST BE SHOWN TO VALIDATE THE REGULATION SHOULD SIMULTANEOUSLY DECREASE.

As has been recognized explicitly in the dissent below and implicitly in Barber, the solution to the problem of regulation of First Amendment activities where they comprise various aspects is to recognize that threshold issue that the various aspects are entitled to various degrees of protection. The Todd dissent below which was subscribed by Chief Justice Sheran and Justice Scott considered Sankirtan as several different activities: distribution, solicitation, sale and collection of funds. ISKCON v. Heffron, 299 N.W.2d 79, 86 (1980) (Todd, J. dissenting). This approach allows for a balanced analysis of the showing of a governmental interest that must be made. Clearly, the state may not validly restrict ISKCON'S devotees' rights to preach their religion to others, nor to distribute literature. However, as to sales and collection of funds particularly under the circumstances described above, the interest of the state moves to tip the balance of the scale in favor of regulation. For example, in ISKCON v. Eaves, 601 F.2d 809 (5th Cir. 1979), this principle was examined. There the ISKCON devotees were required not to

accept proffered money during the practice of Sankirtan but rather to refer prospective donors to a solicitation booth. The court observed:

> "Under the terms of the ordinance, appellants can ask for funds or attempt to sell religious tracts at any place in the airport where they are allowed to proselytize; the ordinance requires only that instead of accepting any proffered money, they refer the donor to a solicitation booth. We do not doubt that this is burdensome and that appellants lose money as a result. But there is little in this record to reveal the extent of the loss, and it is not obvious that the loss would be very great. Atlanta's interest in confining transfers of money to the booths is better documented."

There too the state justified its regulation on the ground that it applied to mechanical non-communicative aspect of transferring money. The Court went on to hold that "the regulated transfers of money [are] the medium, not the message," and that Atlanta demonstrated that the interest it had in the regulation was substantial and the regulation itself reasonable. See Grayned v. City of Rochford, 408 U.S. 104 (1972); Schneider v. State, 308 U.S. 147 (1939).

Other Courts in ruling on similar issues raised by ISKCON'S barrage of litigation challenging state fair booth regulations have demonstrated a sensitivity to the balancing question.

ISKCON v. Conlisk, 374 F.Supp. 1010, 1015 (E.D. Ill. 1973) citing United States v. O'Brien, 391 U.S. 367, 376 (1968), recognized that when speech and non-speech elements are combined, an important governmental interest in regulating the non-speech element can justify incidental restrictions on First Amendment rights.

CONCLUSION

The County of Los Angeles supports the position of the Attorney General of Minnesota that the ruling of the Supreme Court of Minnesota in ISKCON v. Heffron should be reversed because there is no reason to accord First Amendment protection to commercial transactions involving fraud simply because they are claimed to be part of a religious ritual. The seminal case of Murdock v. Pennsylvania, 319 U.S. 105 (1939) warned against precisely this development. Not every activity may be swept into the First Amendment under the cloak of religion. Further, a rational balancing requires that as to the commercial aspects of a claimed religious activity, the state's burden to show a substantial interest in regulating the activity should diminish.

Respectfully submitted,

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No. 80-795

In The

Supreme Court of the United States

OCTOBER TERM, 1980

MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, the Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,

Petitioners,

— *vs.* —

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., and JOSEPH BECA, on behalf of themselves and THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS members,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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MICHAEL HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, HARVEYDALE MARUSKA, President of the Minnesota State Agricultural Society Board of Managers, the Members of the Board of Managers of the Minnesota Agricultural Society, and WARREN SPANNAUS, Attorney General of the State of Minnesota, individually and in their official capacities,

Petitioners,

— *vs.* —

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., and JOSEPH BECA, on behalf of themselves and THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS members,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF FOR THE STATE OF NEW YORK, Amicus Curiae

INTEREST OF THE AMICUS CURIAE

The State of New York holds an annual Fair on state-owned Fairgrounds just outside the city of Syracuse, in Central New York. The Fair is conducted jointly by the State Department of Agriculture and Markets and the State Industrial Exhibit Authority, each of which owns a portion of the buildings and grounds. Each agency, under its rule-making authority, has adopted a "booth rule" for the premises which it owns. See § 350.16(j) of the Rules and Regulations of the Department,

adopted pursuant to § 31-b of the New York Agriculture and Markets Law, and § 13 of the Rules and Regulations of the Exhibit Authority, adopted pursuant to § 1654(c) of the New York Public Authorities Law.

Because of their joint operation of the State Fair, the agencies' rules are referred to collectively as "the New York State Fair Booth Rule." The Booth Rule requires that all solicitations of money be made from a booth, but it does not restrict roving discussion and distribution of literature. A7-8, A35*.

The New York State Fairgrounds comprise a total of 350 acres, including open spaces, and large parking lots outside the gates. There are 40 acres within the gates. After deducting the acreage covered by the race track, grandstand, and infield parking area, the Fairgrounds proper remains, an area of 20 acres within which the exhibits and pedestrian walkways are found. A7. Attendance at the Fair has risen steadily from 526,000 at the seven-day 1977 Fair, to 686,000 at the ten-day 1978 Fair, to 701,000 at the ten-day 1979 Fair. *Id.* Among the exhibitors at the Fair have been agricultural and industrial exhibitors as well as religious, fraternal and political groups. Some of the latter have solicited contributions from fairgoers and all were confined to booths for solicitation regardless of their affiliation, but were not restricted from roving distribution of literature or discussion with fairgoers. A7-8, A35.

The right of the International Society for Krishna Consciousness, Inc. ("ISKCON") and its members ("Krishnas" or "devotees") to have unrestricted access to the New York State Fairgrounds for the solicitation of funds has been the subject

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*References in this form are to the Appendix herein, which contains the MEMORANDUM-DECISION AND ORDER of the United States District Court for the Northern District of New York in *International Society for Krishna Consciousness, Inc., et al.* v. *J. Roger Barber, et al.*, 77-CV-328 (N.D.N.Y. August 25, 1980).

of litigation initiated by ISKCON in 1977. As action was commenced by the filing of a Verified Complaint challenging the constitutionality of the New York State Fair Booth Rule, on August 27, 1977, the day before the 1977 State Fair was to begin. Jurisdiction of the District Court was based upon 28 U.S.C. § 1343(3) and (4), and the cause of action was said to arise under 42 U.S.C. § 1983. See *ISKCON et al.* v. *J. Roger Barber, et al.*, 77-CV-328 (N.D.N.Y. August 27, 1977).

On the day the 1977 Fair began, the Honorable Edmund Port, Chief Judge of the Northern District of New York, granted a temporary restraining order allowing the Krishnas virtually unlimited access to the fair for the purpose of disseminating literature and soliciting money. On August 25, 1978, the day before the 1978 Fair was to begin, ISKCON and another devotee filed a new complaint challenging the booth rule although the 1977 action was still pending. The Honorable Howard G. Munson, District Judge, granted a temporary restraining order allowing the Krishnas access to the fair without observing the booth rule, subject to a number of conditions proposed by the Krishnas. He did so based on the 1977 complaint, and dismissed the 1978 action. Under the temporary restraining order, the Krishnas were to wear identification badges and display them prominently, register with fair authorities, only engage in distribution and solicitation with fairgoers who agreed, refrain from touching anyone without his consent, and restrict their activities to certain places and appropriate times. A15.

On August 30, 1979, five days after the commencement of the 1979 Fair, the Krishnas obtained a temporary restraining order from Judge Port, allowing them access to the Fair on the same terms as embodied in Judge Munson's 1978 temporary restraining order. The next day Judge Port preliminarily enjoined the defendants (hereinafter "the State of New York" or "New York Fair Officials") from enforcing the Booth Rule against the Krishnas, provided that they complied with a

number of restrictions. Although not identical with the restrictions previously imposed, these too required that the Krishnas register, wear an identification card in a visible manner, refrain from unconsented touching of fairgoers, and restrict their activities to specified places and times. A6.

In early 1980, the State conducted extensive pre-trial discovery, including a demand for production of documents and things and five days of depositions of the corporate Plaintiff and individual Plaintiff Alan Attias. On April 21, 1980, now Chief Judge Munson denied a motion by Plaintiffs for summary judgment,[1] and trial on the merits began. The trial lasted for 11 days and produced 44 witnesses, more than a hundred exhibits and a transcript in excess of 1500 pages. Extensive portions of the pre-trial depositions were received in evidence as was the entire deposition of ISKCON's former treasurer, taken during the course of the trial. The trial herein was, to counsel's knowledge, the first and only plenary trial to date in a case involving the rights of Krishnas to engage in solicitation and distribution at a fairgrounds. Without question, the trial produced the most extensive factual record ever developed in a case involving such rights.

The District Court, relying upon the extensive record developed at trial, found a pervasive pattern of fraud and abuse by Krishnas in the course of their solicitations, which they seek to bring under the aegis of the religious ritual of *Sankirtan*. A9. In addition to physical and verbal assaults, A31, the court found numerous examples of misrepresentation deliberately permitted by ISKCON, A26, *see* A30. These included not mentioning the solicitor's Krishna affiliation, slurring the word

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[1] Summary judgment has also been denied by Judge Munson in an unreported MEMORANDUM-DECISION AND ORDER of August 22, 1979. The court held that summary judgment was improper because a full development of the facts was required to determine, in light of the State's claims, what restrictions, if any, should be placed on the activities of ISKCON members at the New York State Fair.

"Krishna" to sound like "Christian," and making up phony charitable causes to elicit donations, A22-23; misrepresentation of products, particularly record albums which falsely purported to contain music performed by popular recording artists, A23; and the wearing of ordinary Western attire, rather than robes, as a "disguise" while soliciting, A21. The court noted that Krishna members were taught techniques such as targeting specific groups, e.g., unsophisticated teenagers and handicapped persons, A27, miscounting or withholding change, and lying or trespassing on private property, A23, all as acceptable means of soliciting donations. The court also noted specific instances of such fraudulent techniques being used, both at the Fair, A24-25, and in the city of Syracuse, A27-28, by Krishna devotees. The court also found repeated instances of Krishna violations of previous court orders relating to their activities at the Fair. A32. Perhaps most importantly, the court found that these activities were not isolated instances of misconduct by hard-to-control devotees, but rather a pattern of deceptive practices, identical in nature, practiced throughout New York, Massachusetts and Maryland and condoned by ISKCON, which used "experienced 'thieves' to teach its new members how to solicit money from the public in exactly the same way." *Id.*

An appeal was taken by ISKCON from the District Court's August 25, 1980 MEMORANDUM-DECISION AND ORDER, to the United States Court of Appeals for the Second Circuit.[2] (No. 80-7709 filed August 26, 1980) The appeal is now pending in that court, and oral argument is scheduled for the week of May 4, 1981. The State of New York has also filed in this Court, pursuant to 28 U.S.C. § 1254(1), a Petition for

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[2] ISKCON also sought a stay of the District Court's judgment and a preliminary injunction allowing them to circulate and solicit money freely at the 1980 New York State Fair. A copy of the Second Circuit's decision of August 28, 1980 denying the relief requested is contained in Appendix B, *infra*.

certiorari to the Second Circuit *in advance of judgment.* See Petition for Writ of Certiorari in *J. Roger Barber, et al.* v. *ISKCON, et al.* (No. _____ filed March ____, 1981).

This amicus curiae brief is being filed by the State of New York because of the striking similarity between the *Heffron* and *Barber* cases. Each involves the same constitutional issue and virtually identical facts, although a full record was developed at trial in *Barber,* whereas *Heffron* was decided on cross-motions for summary judgment. Both cases involve state fair booth rules, applied non-discriminatorily and without regard to content, challenged on First Amendment grounds by the Krishnas whose devotees seek unrestricted rights to solicit money from fairgoers, and defended by the respective states as a reasonable form of time, place and manner regulation. Both require that the solicitation of money and the sale of products or literature be done from a booth; the New York rule, in addition, allows roving discussion and distribution of literature. A35. Both states have posited similar public interests to justify their booth rule: (1) the prevention of fraudulent practices typical of Krishna solicitors and uncontrollable by other means; (2) the control of vehicular and pedestrian traffic; and (3) fair accommodation of competing rights among exhibitors and fairgoers.

The brief is devoted primarily to a discussion of the first of these justifications -- the prevention of a pervasive pattern of fraud and abuse, typical of Krishna solicitors and uncontrollable by other means -- for two reasons. One is that State Fair officials of the *amicus,* when sued by ISKCON in *Barber,* placed "the foundation of their argument on the State's interest in preventing fraud." A39. The other is that the record made during the 11 day plenary trial that was held in New York provides strong additional support to the anti-fraud justification offered here by the State of Minnesota. As the district court noted in *Barber,* it was presented with an opportunity unlike that of any other court to understand the various methods employed by the Krishnas when engaged in distribution and

solicitation. A12. Also because of the plenary trial, the court in *Barber* had before it not only the Krishnas' portrayal of how they carry on their activities, but the state's evidence, which expanded upon and contradicted much of what the Krishnas presented. A19.

The result was a holding that a booth rule is "a reasonable means to combat widespread fraud that cannot be effectively checked by the criminal justice system," A43, and a recognition that "the regulatory methods employed in the past by various government officials and courts [in cases which ISKCON will doubtless cite to the Court] have facilitated the Krishnas in perpetuating their illicit acts." A43. The *amicus curiae* submits that the same is true in the instant case and that the judgment of the Minnesota Supreme Court should therefore be reversed.

ARGUMENT

II

A STATE FAIR BOOTH RULE IS A REASONABLE TIME, PLACE AND MANNER REGULATION WHICH DOES NOT VIOLATE ISKCON'S RIGHT OF EXPRESSION.

The State of New York respectfully submits that a State Fair Booth Rule is a reasonable time, place and manner regulation which does not violate ISKCON's right of expression,[3]

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[3] It is not significant whether one is engaged in speech, association, assembly, or petition, "All four rights are now considered to be elements of a broad right to freedom of expression." J. Nowak, R. Rotonda, and J. Young, CONSTITUTIONAL LAW 829 (1978) (hereinafter "NOWAK"). See also cases cited at NOWAK, footnote 14. Furthermore, in *ISKCON* v. *EVANS*, 440 F. Supp. 414 (S.D. Ohio 1977), Judge Kinneary allowed the plaintiffs' free assembly claims to be included under their

(footnote cont'd.)

for the reasons set forth below. Before considering the reasons, however, it is well to establish some interpretive guidelines.

The general language of the First Amendment[4] has been given specific meaning in a wide variety of settings through a vast body of case law. The subdivisions in this First Amendment jurisprudence reflect the differing considerations involved. The appropriate considerations, and hence the constitutional rules, will differ, for example, depending upon whether the issue is subversive advocacy, "symbolic speech" or obscenity. All three problems involve the same constitutional provision -- the free speech clause -- but the similarity ends there.

Justice Felix Frankfurter once admonished that, in First Amendment analysis, one must "first set to one side decisions which are apt to mislead rather than assist." *Niemotko* v. *Maryland*, 340 U.S. 268, 276 (1951). He was saying that First

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free speech claims and stated that "(s)ince the First Amendments free speech protection encompasses not only the right to speak but also, within reasonable limits, the right to communicate, . . . the free assembly claims raised here will be governed by the same considerations as the free speech claims and need not receive independent analysis." *Id.* at 421. Even if there is an independent right of assembly, which ISKCON could claim to rely upon, it offered no proof of any attempt to exercise such a right in any of the State Fair cases, nor proof of any attempt by defendants to abridge such a right.

[4] The First Amendment, of course, does not apply to the states directly. *Barron* v. *The Mayor And City Council Of Baltimore*, 7 Pet. 243, 8 L.Ed. 672 (1833). Technically speaking, ISKCON's claims are based upon the Fourteenth Amendment, since First Amendment rights are incorporated in the concept of ordered liberty found in the Due Process clause of the Fourteenth Amendment and thus made applicable to the states. *Gitlow* v. *New York*, 268 U.S. 652 (1925); *Stromberg* v. *California*, 283 U.S. 359 (1931); *Near* v. *Minnesota*, 283 U.S. 697 (1931); and *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940). For the sake of clarity the claimed rights will be referred to as First Amendment rights.

Amendment precedents are not fungible, and that to find the appropriate considerations and the relevant precedents, one must look in the correct jurisprudential "pigeonhole."

The pigeonhole in which to seek the answers for this case has been clearly labeled by Professor Gerald Gunther; it involves

> EXPRESSION IN PUBLIC PLACES AND THE MAINTENANCE OF LOCAL PEACE AND ORDER: REGULATING THE "TIME, PLACE AND MANNER" RATHER THAN THE CONTENT OF SPEECH IN THE "PUBLIC FORUM."

G. Gunther, Constitutional Law *et seq.* (10th ed. 1980) (hereinafter "Gunther"), The "Time, Place and Manner" pigeonhole also includes a subsection which pertains directly to this case; as Gunther states, it involves:

> ACCESS TO PUBLIC PLACES OTHER THAN THE TRADITIONAL STREETS AND PARKS: EXPANDING CONTOURS OF THE PUBLIC FORUM.

Gunther at 1278 *et seq.*

The State of New York respectfully submits that application of the appropriate considerations and the relevant precedents demonstrates that a State Fair Booth Rule is a reasonable time, place and manner regulation which does not violate ISKCON's First Amendment right of expression.

A. A Fairgrounds is not an Unlimited Public Forum.

The State of New York respectfully submits that a State Fair Booth Rule is a reasonable time, place and manner regulation, which does not violate ISKCON's First Amendment right of expression, because a fairgrounds is not an unlimited public forum. The principles governing the nature and scope of the right of First Amendment access to the public forum evolved between the 1930's and the 1950's in a series of cases involving the traditional public forum, the streets and the parks. L. Tribe, *American Constitutional Law* § 12-21 (1978), at p. 688 n.2. These cases established the basic Time, Place and Manner

framework which still governs. *Id.* at p. 689. Although a large majority of the cases involved the Jehovah's Witnesses, this Court analyzed the cases wholly or largely on a free expression, rather than a free exercise of religion, basis. Gunther at 1581, n.1.

The civil rights and anti-war movements of the 1960's and the 1970's spawned new issues regarding even the traditional public forum, such as mass demonstrations in a racially-charged climate. Kalven, *The Concept of the Public Forum: Cox* v. *Louisiana*, 1965 Sup. Ct. Rev. 1. They also led to attempts to gain First Amendment access to a variety of non-traditional public forums. Gunther at 1278 *et seq.*

ISKCON devotees exercise their claimed rights in both the traditional and the non-traditional public forum. They are dispatched in organized parties, varying in number, usually from one of ISKCON's many urban temples; there has also been a traveling party of solicitors, based in Pennsylvania, with nation-wide jurisdiction. A11-12. The devotees solicit in the traditional streets and parks of municipalities, A27-28, and at such non-traditional, privately-owned forums as shopping centers, *Lenrich Associates* v. *Heyda*, 504 P.2d 112 (Oregon 1972); A11; *see* A23, and race tracks, A11. They do so in ordinary casual clothes; the men wear casual slacks and shirts and cover their shaved heads with either a wig or a cap of some sort. A21. ISKCON does not initiate litigation to establish their right to solicit at these locations in this fashion. On the contrary. As the court found in *Barber*, devotees use what might be called the "hit-and-run" method of solicitation, never bothering to seek authorization from public officials, A23, or permission from private property owners. *Id.*[5]

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[5] As an example of the Krishnas' efforts to solicit even on private property where they have no federal or state constitutional right to do so, *see Lenrich Associates* v. *Heyda*, *supra*. There the plaintiffs, owners of a private shopping center, obtained an injunction to prevent further unauthorized Krishna solicitation on their property.

ISKCON devotees also exercise their claimed rights in a variety of non-traditional, mostly public forums, from highway rest stops, *ISKCON* v. *Hays*, 438 F. Supp. 1077 (S.D. Fla. 1977), to airline, bus and railroad terminals, *e.g.*, *ISKCON* v. *Eaves*, 601 F.2d 809 (5th Cir. 1979), to stadiums, *ISKCON* v. *Stadium Authority of Pittsburgh*, 479 F. Supp. 792 (W.D. Pa. 1979), to performing arts centers, *United States* v. *Boesewetter*, 463 F. Supp. 370 (D.D.C. 1978) and, apparently, any other public place, such as the World Trade Center, *ISKCON* v. *McAvey*, 450 F. Supp. 1265 (S.D.N.Y. 1978), where "misguided souls" -- to use the Krishnas' frame of reference -- tend to congregate. A10. Last but by no means least, they seek access to fairgrounds, whether public *e.g.*, *Edwards* v. *Maryland State Fair*, 628 F.2d 282 (4th Cir. 1980), or private, *Mechanic* v. *Expo Center of Texas*, No. CA-1-79-51 (N.D. Tex. August 18, 1980), state, *e.g.*, *ISKCON* v. *Barber*, No. 77-CV-328 (N.D.N.Y. August 25, 1980), county, *Gorrick* v. *Erie County Agricultural Society*, Civ. 78-505 (W.D.N.Y.), or local, *Mechanic* v. *Expo Center of Taylor County*, supra. ISKCON's nation-wide litigation strategy is directed to obtaining access to these non-traditional forums -- especially terminals and fairgrounds where the "hit-and-run" method of solicitation cannot effectively be employed.

The State of New York does not contend that the Krishnas have no right of First Amendment access to a governmentally-owned Fairgrounds. Rather it contends that the Booth Rule is a reasonable and appropriate way of regulating the time, place and manner of their access to such a non-traditional publicly-owned forum.

This Court has made clear that public space is not automatically an appropriate forum for the exercise of the First Amendment right of expression. It has cautioned that, even in the traditional public forum of the streets, "The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions and beliefs to express may address a group at any public place and at any time." *Cox* v. *Louisiana*, 379 U.S. 536, 554 (1965)

This cautionary note is all the more appropriate when the forum in question is a non-traditional one, as this Court's decisions make clear. *Grayned* v. *Rockford*, 408 U.S. 104 (1972), involved an ordinance designed to prevent demonstrations from disrupting the atmosphere necessary for learning in public schools, by prohibiting such noisy demonstrations in the vicinity of school grounds. As the Court there stated, "[o]ur cases make . . . clear . . . that reasonable 'time, place and manner' regulations *may be necessary to further significant governmental interests*, and are permitted." *Id.* at 115 (emphasis added). Similarly, *Lehman* v. *Shaker Heights*, 418 U.S. 298 (1974), involved a ban on political advertising in publicly owned transit cars and buses. There the Court reaffirmed that "the nature of the forum and the conflicting interests involved have remained important in determining the degree of protection afforded by the [First] Amendment to the speech in question." *Id.* at 303.

The lower federal courts have also recognized the necessity to consider the nature of the non-traditional forum in judging the reasonableness of time, place and manner regulations. In *Wolin* v. *Port of New York Authority*, 392 F.2d 83 (2d Cir. 1968), the Second Circuit struck down a blanket prohibition against leafleting in the Port Authority Bus Terminal at Eighth Avenue and 40th Street, Manhattan, but stated that it would be legitimate to limit "the specific places within the building where the right of expression may be exercised." *Id.* at 94. The eventual solution was to allow the plaintiffs fixed table space from which to disseminate their political literature. See also *Wright* v. *Chief of Transit Police*, 558 F.2d 67 (2d Cir. 1977) (government has interest in maintaining safe, convenient and orderly flow of pedestrian traffic in the subways).

In *ISKCON* v. *McAvey*, 450 F.Supp. 1265 (S.D.N.Y. 1978) the issue was access by the Krishnas to the World Trade Center. The Center limited the number of devotees to a maximum of ten, and further limited the times and places where they could engage in the exercise of their claimed right of expression.

The District Court, relying upon *Wolin*, reached a number of conclusions which recognized the nature of the particular forum, a large multi-building office and commercial complex. It upheld the limit of ten on the number of permits issued to Krishnas, as a reasonable accommodation between their First Amendment rights and the proper functioning of the Center. The court also found reasonable the limit of one devotee in any particular place, a complete ban of devotees from high traffic areas to prevent confusion and crowding, exclusion of devotees from certain areas where it would disrupt the comfort of workers and visitors to be forced to get up and move away from unwanted communication, and restrictions on solicitation during high traffic "rush hour" periods. *Id.* at 1271. For other ISKCON decisions recognizing that public space is not automatically a public forum, see *ISKCON* v. *Eaves*, 601 F. 2d 809 (5th Cir. 1979) (airport); *Liberman* v. *Schesventer*, 447 F. Supp. 1355 (M.D. Fla. 1979) (national park); and *United States* v. *Boesewetter*, 463 F. Supp. 370 (D.D.C. 1978) (Kennedy Center).

A fairgrounds is no more a completely unlimited forum for First Amendment expression than the non-traditional public spaces just discussed, and a number of courts have upheld the Booth Rule as a reasonable time, place and manner regulation, considering the nature of this particular forum: *E.g.*, *ISKCON* v. *Barber*, No. 77-CV-328 (N.D.N.Y. August 25, 1980); *Hynes* v. *Metropolitan Government of Nashville*, 478 F. Supp. 9 (M.D. Tenn. 1979), *Edwards* v. *Maryland State Fair*, 476 F. Supp. 153 (D. Md. 1979); *ISKCON* v. *Heffron*, No. 421843 (Dist. Ct. 2d Jud. Dist. Minn., August 18, 1980); *ISKCON* v. *Evans*, 440 F. Supp. 414 (S.D. Ohio 1977).

The primary purpose of a fairgrounds was well-summarized in *ISKCON* v. *Evans*, *supra*, where the court stated:

> Finally, the speaking which is to be regulated would take place on fairgrounds whose primary purpose for the duration of the fair is to house an agricultural and industrial exposition and to support educational and competitive junior activities. At this time the fairgrounds are not on a

> constitutional plane with an open-air park or street corner "immemorially . . . held in trust for the use of the public, and, time out of mind, . . . used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague* v. *Committee for Industrial Organization*, 307 U.S. 495, 515, 59 S.Ct. 954, 964 83 L.Ed. 1423 (1939). Nor can a strong parallel be drawn between the Ohio State Fair and a facility in which the intercommunication of ideas is an important aspect of the process to which the facility is dedicated. See generally *Tinker* v. *Des Moines Independent Community School District*, supra.

440 F. Supp. at 425. In the view of one court, a fair is "by definition a congeries of hawkers . . . ." *ISKCON* v. *State Fair of Texas*, 461 F. Supp. 719, 721 (N.D. Tex. 1978). It is for precisely this reason that a booth rule is a reasonable time, place and manner regulation for a fairgrounds, as the courts below and in the Tennessee State Fair case, *supra*, recognized. The Second District, in upholding the Minnesota State Fair Booth Rule, stated that:

> In Minnesota there are over 1400 exhibitors at the State Fair seeking to communicate various information. Some form of time, place and manner restriction is clearly required if the free speech rights of each of these exhibitors are to be protected. In addition the public has a right of access to the several communications which must be protected as well.

ISKCON v. *Heffron*, No. 421843 (2d Dist. Minn. August 18, 1979), slip. op. at 4. Similarly, the court in *Hynes* v. *Metropolitan Government of Nashville and Davidson County*, 478 F. Supp. 9, 11-12 (M.D. Tenn. 1979) stated that:

> The compelling state purpose underlying the limitation of exhibitors' activities is to permit any exhibitors or solicitor the opportunity to exercise the privilege freely without interruption or infringement by others seeking to exercise the same privilege. If plaintiffs were permitted roving solicitation then every exhibitor would be entitled to do the same. It is conceivable that confrontations could occur in which several or all of the ten other religious groups would vie for the ear and attention of the same fair patron. The ensuing babel would not only be chaotic and destructive of

> good order, but would also deny to each exhibitor the meaningful exercise of its First Amendment rights.

Id. at 11. In *State Fair of Texas* the court concluded that ISKCON devotees could be confined to a booth, if they " . . . go [about] in disguise and 'give away' flowers with no distribution of literature or disclosure of purpose . . . ." 461 F. Supp. at 724. The record in *Barber* amply demonstrates that ISKCON devotees habitually do just as the court feared in *State Fair of Texas.* A21, A31. It also shows, A32, that they habitually engage in the very conduct from which they have purportedly agreed to refrain in the Indiana, Maryland and Texas State Fair cases. *See Edwards* v. *Maryland State Fair,* 628 F.2d at 285, n.2; *ISKCON* v. *Bowen,* 600 F.2d at 669; *ISKCON* v. *State Fair of Texas,* ____ F. Supp. ____, ____ (N.D. Tex. 1980); As demonstrated below, these are among the many significant reasons why the State Fair Booth Rule is a reasonable and appropriate regulation of the time, place and manner of the Krishnas' access to this particular non-traditional forum.

B. The Booth Rule is a Nondisciminatory Regulation of Time, Place and Manner, and not of Content.

The State of New York respectfully submits that the State Fair Booth Rule is a nondiscriminatory regulation of time, place and manner, and not of content. The "Time, Place and Manner" analysis of claims of access to the public forum builds upon the belief-conduct dichotomy embraced when the public forum cases first began to come to this Court. *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940), which was both a free expression and a free exercise case, contains the oft-quoted observation that:

> . . . the Amendment embraces two concepts, freedom to believe and freedom to act. The first is absolute but in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.
>
> It is equally clear that a State may by general and nondiscriminatory legislation regulate the times, the places and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safe-

> guard the peace, good order and comfort of the community, without unconstitutionally invading in liberties protected by the Fourteenth Amendment.

Id. at 303-04, 304. Addressing itself specifically to the issue of solicitation, the Court in *Cantwell* went on to say:

> The State is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience.
>
> The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissable barrier to the exercise.

Id. at 306-07, 305. The line of cases for which *Cantwell* stands can be summarized as follows:

> In general it may be said that the state may place reasonable time, place or manner restrictions on speech that takes place in the public forum, but these regulations must be implemented without regard to the content of the speech.

Nowak at 812. Every State Fair Booth Rule challenged by ISKCON meets this test. As indicated above, such a rule does not prohibit the Krishnas from having access to the Fairgrounds; it is regulation, not prohibition. Furthermore, it is regulation of *conduct* and not of *content*. It governs the way in which ISKCON devotees and all others may exercise their First Amendment right of access to this particular forum.

C. The Booth Rule is Justified by a Number of Significant Governmental Interests.

The State of New York respectfully submits that the State Fair Booth Rule is a reasonable time, place and manner regulation of the Krishnas' conduct, and does not violate their First Amendment right of expression, because it is justified by a number of significant governmental interests.

The standard for judicial review of a time, place and manner regulation for such a non-traditional public forum as a State Fairgrounds, when challenged on the basis that it infringes upon the right of free expression, has not been addressed by this Court. In the absence of authoritative instruction from the Court, some of the ISKCON fairground cases have required a "compelling" governmental interest, *e.g.*, *Edwards* v. *Maryland State Fair*, 628 F. 2d at 286, while others have required that an "important" or "substantial" interest be shown, *e.g.*, *ISKCON* v. *Evans*, 440 F. Supp. at 421 ("important" interest required); *Edwards* v. *Maryland State Fair*, 476 F. Supp. at 161 ("substantial" interest required).

Justice Benjamin Cardozo once remarked, in another context, that " . . . [A] great principle of constitutional law is not susceptible of comprehensive statement in an adjective." *Carter* v. *Carter Coal Co.* 298 U.S. 238, 327 (1936). His point is well taken. A case of this importance does not turn on an adjective. If one must be selected, however, the State of New York submits that the appropriate choice is "significant," the term used by this Court in *Grayned* v. *Rockford*, 408 U.S. 104 (1972). *Grayned* involved the regulation of First Amendment expressive conduct at a non-traditional public forum, a public school. This Court reiterated that the crucial question in such a setting was "whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time," and indicated that reasonable time, place and manner regulations "may be necessary to further *significant governmental interests*, and are permitted." 408 U.S. at 115 (Emphasis added.) "Significant" would plainly be more appropriate than "compelling," which suggests an extraordinarily stringent standard of review, *see* Nowak at 535, and which has never been employed by this Court in the time, place and manner context.

1. **The Prevention of a Pervasive Pattern of Fraud and Abuse, Typical of Krishna Solicitors and Uncontrollable by Other Means, is a Significant Governmental Interest Which Justifies a State Fair Booth Rule.**

The State of New York respectfully submits that the prevention of a pervasive pattern of fraud and abuse, typical of Krishna solicitors and uncontrollable by other means, is a significant governmental interest which justifies a State Fair Booth Rule.

a. **The Sankirtan Solicitation Practices of ISKCON: The Appearance and the Actuality.**

Whatever its antecedents and the connotations of "Sankirtan" elsewhere, the "modern version of Sankirtan," as the New York district court explained in *Barber*, consists of the distribution of literature and solicitation of funds, in ordinary Western attire, by Krishna devotees given standard classroom and on-the-job training at the various temples throughout the country. A14, A22.[6]

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[6] Although ISKCON externally refers to this activity as "Sankirtan" and claims that it is obligatory for devotees, internally it is referred to as "Book Distribution" a term which is much more accurate. Indeed, A.C. Bhaktivedanta Swami Prabhupada, the founder of ISKCON, has written "[i]n our Krsna [Krishna] consciousness movement, all our activities are concentrated on book distribution . . . all our activities are concentrated upon distributing Krsna [Krishna] literature. This is very important." *Preaching Is The Essence* 30 (1977). *See also id.* 93-95.

Despite the Krishnas representations to the contrary, and the stipulated facts in a number of the State Fair cases, the practice of Sankirtan as herein defined is *not obligatory* for ISKCON devotees. On the contrary, the court found as fact in *Barber* that such solicitation is not required of all devotees, A21, particularly those at ISKCON farms, few of whom ever engage in Sankirtan. It is even true of urban temples, such as the New York City temple, which has 600-1,000 members, 190 of whom live at the temple. The outside members never engage in

(footnote cont'd.)

ISKCON's litigation strategy, mentioned above, is employed to facilitate the practice of this form of Sankirtan at state, county and local fairs. Although the opening date for the fair is established well in advance, the ISKCON strategy is to hit unsuspecting defense counsel with an application for equitable relief; usually in Federal court, on the very eve of the fair. The district court in *Edwards* v. *Maryland State Fair and Agriculture Society*, 476 F.Supp. 153, 160 (D. Md. 1979), spoke of ISKCON's "impressive track record" in such litigation; however, a large part of this seemingly impressive track record is comprised of decisions on application for a temporary restraining order or preliminary injunction. An articulate ISKCON spokesman, experienced at testifying, takes the stand, with shaved head and flowing saffron garb, and describes the Krishnas' position. Defense counsel lacks the time and prior experience with the Krishnas to cross-examine the witness effectively. Under the circumstances, he has little or no ability to obtain countervailing proof. It is small wonder, then, that ISKCON has often obtained the interim injunctive relief which it has sought.[7]

Sankirtan, and only about 25 of the temple residents participate. A22. Against this type of factual record it can hardly be said, as the courts did in *ISKCON* v. *Bowen*, 456 F. Supp. at 439, and *Edwards* v. *Maryland State Fair*, 476 F. Supp. at 155, that Sankirtan is central to Krishna belief or obligatory for devotees, nor should a court assume such facts even as it admits that there is "no evidence" to prove them, *see ISKCON* v. *Evans*, 440 F. Supp. at 417.

[7] ISKCON has obtained such interim relief on many occassions, *e.g.*, *ISKCON* v. *Colorado State Fair and Exposition Commission*, 610 P.2d 486 (Colo. 1980); *ISKCON* v. *Carey et al.*, No. 77-CV-328 (N.D.N.Y. August 31, 1979); *ISKCON* v. *Kearns*, 454 F. Supp. 116 (E.D. La. 1978); *ISKCON* v. *Carey et al.*, No. 77-CV-328 (N.D.N.Y. August 25, 1978); *IKSCON* v. *Bowen*, 456 F. Supp. 437 (S.D. Ind. 1977); *ISKCON* v. *Carey et al.*, No. 77-CV-328 (N.D.N.Y. August 30, 1977). However, ISKCON's failure to obtain such relief is by no means rare, *e.g.*,

(footnote cont'd.)

This "Eleventh Hour Blitzkrieg" was used for three years running in *Barber*, A5-7. It has been used in other cases as well, with the Krishnas filing their complaint and demand for a temporary restraining order on the eve of, or after commencement of, the fair in question, *e.g.*, *Edwards* v. *Maryland State Fair*, 476 F. Supp. 153, 154-55 (D. Md. 1979), *ISKCON* v. *Central Washington Fair Association*, No. 77-2-01447-1 (Super. Ct. Yakima County Wash., October 4, 1977), even when they were informed well in advance of the fair of the authorities' position that the Booth Rule must be abided by, *e.g.*, *ISKCON* v. *Evans*, 440 F. Supp. 414, 417 (S.D. Ohio 1977), *ISKCON* v. *Central Washington Fair Association*, slip op. at 3. Indeed this eleventh hour tactic was apparently utilized even in the instant case, *see ISKCON* v. *Heffron*, 299 N.W.2d 79, 82 (Minn. 1980).

The next level of controversy is on motion or cross-motions for summary judgment. The supporting and opposing evidence is documentary; a "paper" case is made. Almost invariably some or all of the critical facts are stipulated,[8] a procedure by

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Hynes v. *Metropolitan Government of Nashville*, 478 F. Supp. 9 (M.D. Tenn. 1979); *Edwards* v. *Maryland State Fair*, 476 F. Supp. 153 (D. Md. 1979); *ISKCON* v. *McAvey*, 450 F. Supp. 1265 (S.D.N.Y. 1978). In at least one instance ISKCON's deliberate use of its eleventh-hour tactics caused the court, in the exercise of equitable discretion, to deny preliminary relief. *ISKCON* v. *Central Washington Fair Assoc.*, No. 77-2-01447-1 (Super Ct. Yakima County Washington, October 4, 1977), *aff'd*, No. 2575-III (Ct. App. Wash. Div. III, October 6, 1977).

[8] As a sampling of such stipulations, consider the following examples. *ISKCON* v. *Heffron*, the instant case, involved the stipulation that *Sankirtan* included solicitation of funds. *ISKCON* v. *Bowen*, 456 F. Supp. 437 (S.D. Ind. 1977), involved *inter alia*, stipulations that *Sankirtan* includes the solicitation of funds, *id.* at 439, and that it is obligatory for all devotees, *id.* In *ISKCON* v. *Evans*, 440 F. Supp. 414 (S.D. Ohio 1977), the court *assumed* that Krishna devotees are encouraged to act peacefully while soliciting, *id.* at 417, a conclusion which the *Barber* record belies; the court further assumed that *Sankirtan*

(footnote cont'd.)

which ISKCON's self-serving assertions are validated rather than being put to the test. The difference made by a plenary trial is striking. For the first time in *Barber*, a trial court had a complete record showing the divergence between the Krishnas' self-serving assertions and stipulations and the actuality of how they carry on distribution and solicitation. The result was the court's conclusion that the New York State Fair Booth Rule was justified as a means of preventing continuation of the Krishnas' "widespread and systematic scheme of accosting, deceit, misrepresentation and fraud on the public . . . ." A43.

The pervasive pattern of fraud and abuse found in *Barber* is typical of Krishna solicitors throughout the country, which should come as no surprise, since the instructions which they are given and the manner in which they are carried out "are the same from temple to temple." A22. During classroom instructions devotees are "psyched" up for their solicitation duties, encouraged to be aggressive and to try to get as much money as possible. They are told that the best way to please their spiritual master is by doing such duties well, a statement which holds special significance, because spiritual masters hold great power over devotees. If a devotee is told by a spiritual master that a snake is a stick and to pick it up, he is to comply. *Id.*

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included fundraising even though the court saw "no evidence" of same, *id.* These cases were decided entirely upon stipulated facts. *ISKCON* v. *Heffron; ISKCON* v. *Bowen, supra; ISKCON* v. *Colorado State Fair and Exposition Commission*, 610 F.2d 486 (Colo. 1980). These cases were decided at least partly upon stipulations and without plenary trials: *ISKCON* v. *State Fair of Texas*, No. CA-3-78-1279-G (N.D. Texas, July 30, 1980); *Hynes* v. *Metropolitan Government of Nashville*, 478 F. Supp. 9 (M.D. Tenn. 1979); *Liberman* v. *Schesventer*, 447 F. Supp. 1355 (M.D. Fla. 1978).

Creativity in soliciting is also encouraged. Devotees are told to figure out ways to get the "karmi"[9] to donate more money. At Christmas time, for example, the most common Krishna ploy is to dress up as Santa Claus and give out candy canes while soliciting contributions. *Id.*

More specific instructions are given during on-the-job training, when new Sankirtan devotees are sent out with senior devotees whom the temple leaders consider to be experienced at Krishna methods of solicitation. *Id.* During the trial in *Barber*, an ex-devotee described, in sworn testimony, her education in Sankirtan solicitation practices, received at the hand of two of the best female solicitors for the Baltimore temple. Her teachers were characterized by ISKCON's own trial counsel in *Barber* as "crooks," A26, and with good reason, considering the court's description of the "lessons" which they imparted to their pupil.

She was instructed not to wear an identification badge and, if possible, to avoid affiliating herself with the Krishnas. If a potential donor asked her affiliation, she was to try to confuse him by slurring the word "Krishna" into sounding like the word "Christian." She was also instructed to make up "purposes" for requesting donations, such as worldwide education, food distribution programs or children's drug programs. She was further told that it was all right not to ask people's permission before pinning a button or artificial flower on them. Potential donors were informed that the musical stars mentioned on the

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[9] All non-Krishnas are regarded as "misguided souls," and are referred to variously as "karmi," "demons," "dogs" and "children." It is not important that such persons understand the "meaning" of their contribution, be engaged in a religious discussion about Lord Krishna, or even be able to recognize the religious identity of the devotee. A21-22. What this means in ordinary terms, of course, is that it is all right for the Krishnas to lie to the misguided souls to obtain a contribution. *E.g.*, A22-23.

back of the albums used during solicitation actually performed on the albums. The devotees would only rarely discuss religion with a prospective contributor, since religious discussions were considered a nuisance, especially when devotees solicited at places with a lot of people, because such conversations would cut down on the amount of soliciting that could be done. A22-23.

Other techniques for increasing monetary contributions included:

> . . . flirting with males, attempting to get people to donate larger bills, intentionally miscounting change, folding over bills to shortchange people, and holding large bills for a long time in an effort to make the donor tired of the idea of getting the desired amount of change back. The junior devotee was told that it was all right to lie to security personnel in order to obtain the right to solicit at an airport, and to enter private premises to solicit without permission. She was taught to target people such as navy men as easy marks. Once her instructor took her to a nearby naval base on its monthly pay day. Apparently, the Krishna instructor's secret ambition was to get a serviceman to "donate" his entire monthly pay check to the Krishnas. A23.

When asked whether the incidents which she had described were isolated events, perpetrated by overzealous devotees, the former pupil replied that "It was their normal enthusiasm, they had done it for a long time." A23.[10] The record in *Barber*

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[10] The ex-devotee's description of how Sankirtan solicitation is actually carried on by the Baltimore temple contrasts sharply with the purported instructions to solicitors cited in *Edwards* v. *Maryland State Fair*, 628 F.2d 284, n.1.

It is also interesting to note that one of the named individual plaintiffs in *Edwards* is Raymond Kissane, the devotee whose pervasive misconduct from New York to North Carolina is summarized by the court in *Barber*. A25. The *Edwards* court conceded that its decree might require modification if a marked change in circumstances should occur. *Id.* at 287. If Mr. Kissane remains true to form, the change should not be long in coming. The court will then have some very real and not just "possible horribles," *id.* at 286 against which to judge the reasonableness of Maryland's booth rule.

confirms that, indeed, the incidents described were not isolated or speculative, nor were they the acts of a "small handful of 'immature' or 'inexperienced' devotees," A23, A24, A26, A45, to borrow a favorite ISKCON refrain. A15-16, A24. Quite the opposite; her testimony was, almost without exception, a reliable index of the different soliciting methods habitually employed by the Krishnas. A23-24. These methods add up to a pattern of deceptive practices, identical in nature, carried on at the New York State Fair, in the Syracuse community, and at Fairs and other locations throughout the multi-state area from New York and Massachusetts through Maryland and North Carolina. A24-32, A43-45. This "widespread and systematic scheme of accosting, deceit, misrepresentation, and fraud on the public . . . ." A43, was deliberately permitted, A26, and condoned, A43, by ISKCON, which uses "experienced 'thieves' to teach its newer members how to solicit money from the public in exactly the same way." A43. The instant case and other State Fair cases, such as *ISKCON* v. *State Fair of Texas*, 461 F. Supp. at 720-21, 724 and *Edwards* v. *Maryland State Fair*, *supra* at 285, n.2, have reported the same findings, although the quantum of proof has been less, since no plenary trial was held in any of those cases.

The Sankirtan solicitation of Krishna devotees is a practice "rife with potential fraud," as the court recognized in the *Texas State Fair case*, 461 F. Supp. at 723. The instant case, *Barber*, and State Fair cases throughout the country demonstrate that the potentiality – unfortunately, but inevitably – will be realized unless the Krishnas are required to confine their solicitation of funds to a booth. Obliging them to do so, as the dissenting opinion below states, is a reasonable way of protecting Minnesota State Fair patrons from fraud, misrepresentation and other acts of misconduct. 299 N.W.2d at 87 (dissenting opinion).

b. The Pervasive Pattern of Fraud and Abuse Which is Typical of Krishna Solicitors is Uncontrollable by Means other than a State Fair Booth Rule.

The State of New York respectfully submits that the pervasive pattern of fraud and abuse which is typical of Krishna solicitors is uncontrollable by means other than a State Fair Booth Rule. As a supposedly "less restrictive alternative" to such a rule, ISKCON routinely proposes the use of penal sanctions against individual devotees guilty of fraud or assault while soliciting, or the issuance of a "counter-injunction," imposing identification and registration requirements, setting forth when and where solicitation may occur, and forbidding such conduct as touching any fairgoer without his permission. *See, e.g., Edwards* v. *Maryland State Fair*, 628 F.2d 282, 286, n.2 (4th Cir. 1980); *ISKCON* v. *Bowen*, 600 F.2d 667, 669 (7th Cir. 1979); *ISKCON* v. *State Fair of Texas*, CA-3-78-1279-G, ____ F. Supp. ____ (N.T. Tex. July 30, 1980). The courts which have adopted the Krishnas' proposals, operating without the proof of their "systematic, symptomatic and patternistic" misconduct which was shown in *Barber*, A45, are in for a rude awakening. The use of penal sanctions is not practicable in the State Fair context, and the counter-injunctions so highly touted by ISKCON are a futile exercise.

The use of penal sanctions, although frequently suggested by this Court and other courts as a less restrictive means of accomplishing the state's objectives, is not practicable in the State Fair context. The Krishnas' "widespread fraud," A43, "cannot be effectively checked by the criminal justice system," A43, as the court in *Barber* and the dissent below recognized *ISKCON* v. *Heffron*, 299 N.W.2d at 88. Fairgoers come from across the state and the nation, "to enjoy themselves, and not to file criminal complaints, or to return some months in the future to appear as witnesses." A45. To expect them to do so would be to "ignore the realities of human behavior," *ISKCON* v. *Griffin*, 437 F. Supp. 666, 673 (W.D. Pa. 1979), and thus to

rely upon an alternative which is appealing in theory but unworkable in practice. The situation is compounded by the difficulty in policing a crowded fairground, and the "hit-and-run" nature of Krishna solicitors who fleece or assault fairgoers and disappear into the crowd. A30-31, A45.

The State Fair context, therefore, is clearly distinguishable from others in which this Court has relied upon penal sanctions as a less restrictive alternative incumbent upon the state. For example, in *Schaumberg* v. *Citizens for a Better Environment*, 444 U.S. 620 (1980), the Court indicated that fraud could better be dealt with on a case-by-case criminal prosecution basis, *id.* at 639. In *Schaumberg*, however, the municipality was concerned with door-to-door solicitation and the victim of any fraud could no doubt file his complaint and give any necessary testimony in or near his home town, which is not the case for most fairgoers.[11]

The counter-injunctions, so highly touted by ISKCON, and proposed to allay the courts' qualms about the devotees' conduct during roving Sankirtan, are nothing more than a futile exercise. Indeed, as the court recognized in *Barber*, prior use of such conditions by governmental officials, including fair authorities, and by the courts, has "facilitated the Krishnas in perpetuating their illicit acts." A43. The reason is not far to seek, although it is ironic. The terms and conditions which ISKCON continues to propose to the courts as a less restrictive

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[11] *Schaumberg* is also distinguishable in the nature of the challenged restriction; there, the group which wished to solicit but which did not meet the municipality's requirements was totally precluded from doing so. Under the Booth Rule solicitation is permitted but is restricted to a fixed site on the Fairgrounds. The same factor distinguishes *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940), and *Schneider* v. *New Jersey*, 308 U.S. 147 (1939), both of which involved restrictions more akin to a total ban on First Amendment-protected activity rather than a reasonable time, place and manner restriction such as the Booth Rule.

alternative to the Booth Rule are the very ones to which it has agreed with defendants around the country, and then violated "with unabashed arrogance." A44.

The experience at the New York State Fair is instructive. The stipulations which the court imposed upon the Krishnas' solicitation at the 1978 and 1979 Fairs were "flagrantly violated." A32. ISKCON and its devotees failed to

> register devotee identities, engage in solicitation in a peaceable manner and without harassment to the public, ask fairgoers' permission before touching them, honor the requirement that they not solicit within 10 feet from an exhibition or booth, or solicit fairgoers sitting on a bench or waiting in line. A32.

The court found several other persistent violations of its orders[12] and noted that the same type difficulties had occurred with the same devotees at other Fairs which they had attended, where they repeatedly violated conditions which they had stipulated to observe. A29, A30, A32. The experience in the instant case has been the same. *ISKCON* v. *Heffron*, 299 N.W. 2d at 87-88. Whatever the superficial attractiveness of the Krishnas' proffered alternatives, the State of New York respectfully submits that, in the real world of time, place and manner regulation of their access to a State Fairgrounds, there is no means other than a Booth Rule to control their pervasive pattern of fraud and abuse.

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12 It should give this Court some insight into the Krishnas' attitude toward such court orders to note that they simply refused to comply with a discovery order issued by Judge Munson relating to their financial records. A19-20. ISKCON provided only a part of the information requested, and even that was conceded by their own treasurer to be inaccurate, A29; no excuse has been offered for the Krishnas' flouting of Judge Munson's order.

A STATE FAIR BOOTH RULE IS A REASONABLE TIME, PLACE AND MANNER REGULATION WHICH DOES NOT VIOLATE ISKCON'S RIGHT TO THE FREE EXERCISE OF RELIGION.

The State of New York respectfully submits that a State Fair Booth Rule is a reasonable time, place and manner regulation which does not violate ISKCON's right to the free exercise of religion. Any burden which may be placed upon the Krishnas' conduct is incidental to and no greater than is necessary to foster the significant governmental interests already noted.

The free exercise claim can be treated briefly for two reasons. One is that many of the points already made about time, place and manner regulation, and less restrictive alternatives apply with equal force to ISKCON's free exercise claim. Another is that there appears to be little if any difference between the free expression and free exercise claims in a case like this, as the court recognized in *ISKCON* v. *Evans*, 440 F. Supp. at 421, 425. See also Gunther at 1581 and Nowak at 871-79.

There is no substantial burden on the Krishnas' free exercise of their religion, for the reason that the Minnesota State Fair is regulating *conduct*, and, indeed, conduct which is not obligatory for ISKCON devotees. As the court found in *Barber*, what ISKCON calls "Sankirtan" externally and "Book Distribution" internally, is not obligatory. A21-22. As the court observed in *Edwards* v. *Maryland State Fair*, 476 F. Supp. at 165, it is but one manifestation of ISKCON's religious practice, and is by no means claimed to be a central aspect of worship.

Finally, even if the State Fair Booth Rule places a burden on the Krishnas' conduct, the burden is incidental to and no greater than necessary to foster the many significant governmental interests discussed in this *amicus curiae* brief.

III

CONCLUSION

In the courtroom and in the media ISKCON sounds the refrain that the fraud and abuse which occur during Sankirtan are isolated instances attributable to the immaturity, inexperience or excessive enthusiasm of a few devotees, which makes them come on too strong. Nothing could be further from the truth. "Coming on too strong", as the *Barber* court found, is simply part of the Krishnas' "widespread and systematic scheme of accosting, deceit, misrepresentation, and fraud on the public in their Sankirtan activities." A43. ISKCON's claim to the contrary is "absolutely untrue." A24.

For the above-stated reasons, the State of New York respectfully submits that the Minnesota State Fair Booth Rule is a reasonable, nondiscriminatory regulation of time, place and manner, and not of content, which is justified by a number of significant governmental interests, including the prevention of a pervasive pattern of fraud and abuse, typical of Krishna solicitors, and which is uncontrollable by means other than the Booth Rule. The decision of the Minnesota Supreme Court should therefore be reversed, and the complaint herein dismissed.

Respectfully submitted,

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APPENDIX

APPENDIX A — Memorandum-Decision and Order of Munson, J., dated August 25, 1980.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., AND, ON BEHALF OF THEMSELVES AND ALL INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS MEMBERS, AND ALAN ATTIAS, A/K/A AJA DASA, AND KENNETH L. SOLOMON, A/K/A KESIHANTA, *Plaintiffs,*

— *vs.* —

J. ROGER BARBER, in his official capacity as Commissioner of the DEPARTMENT OF AGRICULTURE AND MARKETS OF THE STATE OF NEW YORK, and THOMAS G. YOUNG, Director of the New York State Industrial Exhibit Authority, and JAMES G. GARLICK, Acting Director of the New York State Industrial Exhibit Authority, *Defendants.*

77-CV-328

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APPENDIX A — Memorandum-Decision and Order of Munson, J., dated August 25, 1980.

HOWARD G. MUNSON, C.J.

MEMORANDUM-DECISION AND ORDER.

I.

The First Amendment is dedicated to the proposition that a citizen's right to form, hold, or express opinions or beliefs is entitled to an accommodation from the government whenever possible. This principle embodies certain fundamental social decisions about the type of society that would be created as a result. One such decision concerns our society's attitude towards its discordant voices. Every society seeks, to varying degrees, to manage the forces of social unrest within its borders. The First Amendment envisions a system by which social order can be achieved by channeling this unrest through self-expression, rather than by trying to suppress individuals who espouse ideas that are unpalatable to the majority of the citizenry.

As a practical corollary, however, there will be times when this accommodation will favor society's interest in protecting itself as a whole. For instance, if spoken in a particular setting or at certain times, the message of a speech may be so dangerous that it ought to be regulated or even prohibited for the good of all citizens. Society cannot tolerate a person yelling "fire" in a crowded theater when there is no fire. At the same time, there will be occasions where the manner in which speech is presented may require regulation for the greater good of society. Thus, a prohibitory rule is appropriate to guard against the con man who would have the unwary believe that he solicits for the benefit of both widow and orphan when, in reality, he desires only to improve his own treasury.

These examples enjoy the benefit of being clear cut. In the typical situation, however, it is harder to determine where the rights of one group should end and where the rights of another

should begin. Frequently, courts are required to evaluate whether, in balancing the rights of individuals, governmental entities have reached a constitutionally permissible result. In the course of exercising this responsibility in the past, courts have often strained to reach judgments, have arrived at opposite conclusions, and have covered their tracks, in the words of Supreme Court Justice Jackson, with the "pronouncement of general propositions with which there is no disagreement."[1]

In the view of one noted legal commentator,[2] though clearly formulated rules in this area are essential, the courts' difficulties in the First Amendment arena are understandable. Says he, our system of free expression contemplates that "[t]he members of society must be willing to sacrifice individual and short-term advantage for social and long-range goals." Continuing on, he states: "[y]et, because [this system] recognizes the right of the citizen to disagree with, arouse, antagonize, and shock his fellow citizens and the government, such an arrangement of human affairs is hardly likely to be automatically achieved."[3]

While the Court agrees with the latter proposition, it cannot accept the former as being correct. In the same opinion, partially quoted from above, Justice Jackson said: "[c]ivil liberties had their origin and must find their ultimate guaranty in the faith of the people."[4] There is a "good faith" limit to the number of times that the majority of society can be asked to forsake their liberties in favor of some small group which claims that their beliefs or opinions compel this result. Hence, exceptions such as these must be very narrowly drawn, and should reflect our common sense and fundamental values. In the past, all too often judgments in this field have not; and they have substituted a certain transcendental consciousness of their own for practical solutions.

Such a judicial legacy will not only fall of its own weight, it will make it more difficult for communities to find practical solutions to constitutional problems. The ultimate danger in

this course is clear. Soon, a society's long-range social goals will become casualties of short-sighted convenience, and the people will lose faith in the meaning of their liberties. Moreover, the end will have been hastened by a willingness of courts to replace common sense and values with outmoded legal theories, whose combined effect is to grant selected minorities the license to write their own code of conduct at the expense of the rights of others. While questions of free expression or religion commonly require the courts to seek practical solutions, we need not reach judgments as did Plato's men, who were chained in a cave and only able to see their shadows. There may come a time when a minority group seeks constitutional favoritism that in common sense terms is neither justified, nor is in the interests of society as a whole. At such times, this Court is duty bound to reject such a request. By way of concluding these remarks, again the words of Justice Jackson:

> The First Amendment grew out of an experience which taught that society cannot trust the conscience of a majority to keep its religious zeal within the limits that a free society can tolerate. I do not think it any more intended to leave the conscience of a minority to fix its limits. Civil government can not let any group ride roughshod over others simply because their "consciences" tell them to do so.[5]

This action began with the International Society for Krishna Consciousness (hereinafter referred to as Krishnas) and one of its members, Alan Attias, filed a complaint in the Northern District of New York on August 29, 1977, the day before the 1977 New York State Fair was to begin. The Krishnas are a duly organized not-for-profit corporation, incorporated under the laws of the State of New York, with their main branch located in New York City, and with various temples located throughout the United States and the world. As originally joined, the defendants in this action were Hugh L. Carey, sued individually and as Governor of the State of New York; J. Roger Barber,

sued individually and as Director of the New York State Department of Agriculture and Markets; and Thomas G. Young, sued individually and as Director of the New York State Fair.

The gravamen of the plaintiffs' 1977 complaint was that the New York State Fair's booth regulation prohibited the Krishnas from freely circulating at the Fairgrounds, and practicing a Krishna ritual known as Sankirtan. According to Krishna custom, Sankirtan requires that a devotee proselytize the Krishna religion and solicit monies for its support. The booth restriction, said plaintiffs, violated the Krishnas' First and Fourteenth Amendment rights of free speech, free exercise of religion and peaceable assembly. In their prayer for relief, the Krishnas sought a temporary restraining order preventing defendants from refusing the Krishnas unlimited access to the Fairgrounds. This order was subsequently granted by the Honorable Edmund Port, Senior Judge of this District, on August 30, 1977. Prior to the filing of the complaint, the New York State Fair had not yet formally reduced its booth regulations to writing. However, such regulations were drawn up and printed after this suit was commenced. It should also be noted that the State Fair is a cooperative enterprise between two public agencies. One is the Division of the State Fair of the State Department of Agriculture and Markets, and the other is the New York State Industrial Exhibit Authority. Both agencies are involved in this action because each has rule-making authority which plaintiffs contest.

Although the 1977 complaint was never dismissed, one day before the 1978 New York State Fair was scheduled to begin, the Krishnas and Krishna devotee Nicholas D'Angelo filed a second complaint, seeking another temporary restraining order to enjoin the defendants from enforcing the booth requirement at the 1978 State Fair. This Court heard oral argument on August 28, 1978, and granted plaintiffs' relief effective through September 1, 1978, which allowed plaintiffs access to the Fairgrounds subject to some twenty-one conditions which were

standard stipulations that plaintiffs propose to courts and various defendants in this type of litigation around the country. In general, the restrictions relate to the type of activity in which devotees engage; registration and liason procedures; fees and the manner and place of the activity. The order was subsequently extended for the duration of the Fair, and it was partially modified to exclude the Krishnas from the building known as the Cow Barn.

On January 12, 1979, defendants filed their answer to the 1977 complaint. Thereafter, by notice of motion dated July 20, 1979, plaintiffs moved for summary judgment, and oral argument was heard on July 30, 1979. The Court eventually denied the motion, believing that a full trial of the issue was necessary. On August 28, 1979, Judge Port signed still another temporary restraining order embodying the same twenty-one conditions as this Court's Order, and it was to be in effect until a motion for a preliminary injunction could be heard. Later that day the temporary restraining order was vacated until such time when all counsel could be present for a hearing on the preliminary injunction which was set for August 30. Between those dates, no Krishna was to enter the Fairgrounds to perform Sankirtan. One did, however, and was arrested, and later banished from the Fairgrounds by Judge Port. The temporary order was reinstated on August 30, and the Judge dictated his decision into the record the next day granting a preliminary injunction. Plaintiff subsequently moved for summary judgment on November 28, 1979, and this motion was held over by the parties on agreement that it would be renewed on April 21, 1980, which was the date set for trial on the merits.

The trial began as scheduled, plaintiffs renewed their motion for summary judgment, and it was denied. Other motions were also disposed of at that time. These included plaintiffs' motion to add Kenneth Solomon as a party and to dismiss the action as to Governor Carey, Commissioner Barber, and Fair Director

Young in their individual capacities. The trial lasted 11 days, 1500 pages of testimony was taken, and 44 witnesses were called by the parties. These included religious experts, a "de-programmed" Krishna, and a number of state and county fair officials from around the country. Before examining the facts in dispute, some further background on the State Fair will prove useful.

The New York State Fairgrounds are located in the Town of Geddes, just outside the City of Syracuse. The total area of the grounds, including the large parking lots outside the gates and the various open spaces is approximately 350 acres. (Garlick, pp. 129, 130). The area within the gates of the Fairgrounds comprises something less than 40 acres. This is the area housing all of the many structures as well as areas of pedestrian traffic, and the 40-acre figure includes the large grandstand area and the infield parking area. After deducting the acreage of the race track, grandstand, and the infield parking area, one is left with the Fairgrounds proper, a total of approximately 20 acres within which the actual exhibit and pedestrian walkways are found.

Attendance at the New York State Fair has increased steadily since 1977. That year, the duration of the Fair was seven days and the total attendance was approximate 526,000. In 1978, the duration of the Fair was increased to ten days, and the total attendance was approximately 686,000. In 1979, when the Fair was again ten days, total attendance was approximately 701,000.

The bulk of exhibitors at the New York State Fair represent the best examples of the fine agriculture and progressive industry found within the State of New York. Also included among the exhibitors are representatives of various religious, fraternal, or political groups which communicate their ideas to the public attending the Fair. Exhibitor space has consistently been rented to groups such as Right-to-Life, Planned Parenthood,

Seventh Day Adventists, Lutheran Laymen's League, the Knights of Columbus and many others. Many of these groups were soliciting contributions to help their cause and all were confined to booths during the course of the Fair. The Court turns now to an examination of the Krishna religion and the practice of Sankirtan.

II.

The International Society for Krishna Consciousness is a religious organization that traces the origins of its beliefs to the Vaishnava Tradition of Bhakti Hinduism, which was formalized in the ninth century, A.D., in southern India. The scriptural source of this Tradition are the ancient Vedic literatures. Included among these scriptures are the Samhita and the Upanishads, which are the canonical mainstays of the Vaishnava tradition, and the acceptance and belief in these scriptures are incumbent on authentic followers.

The Samhita and Upanishads are referred together as the Shruti, signifying that their contents were first heard by the sages, as revealed to them by the Lord. The other writings of the Tradition are called the Smriti, which are the commentaries on the Shruti. These are noncanonical or "secondary" texts, whose interpretations are not considered to be binding on the faithful. The more significant religious works studied by the Krishnas descend from the Smriti, such as the *Srimad Bhagavatam*, and the *Bhagavad-Gita*.

Although the Krishnas identify the roots of their beliefs as being centuries old, the organizational beginnings of their Society in this country are as recent as the mid-1960's, when the Spiritual Master A.C. Bhaktivedanta Swami came to this country from India at the behest of his Spiritual Master, and started a small temple in New York City. Bhaktivedanta Swami was eleventh in the chain of disciples of the Chaitanya movement of Bengal in northeastern India. The central figure in that

movement was the Sage Chaitanya who lived from 1486 to 1533, and was understood to be an incarnation of God or Krishna. It is said that Lord Chaitanya was able to unlock the message of God for the masses, and he proclaimed that one day his name would be chanted in every town and village in the whole world. The book describing his life, the *Sri Caitanya Caritamrta*, is considered part of the Krishna scriptures.

It would appear that as a result of Lord Chaitanya's proclamation, a fundamental responsibility of the modern Krishnas is to practice Sankirtan, a missionary type of practice, in which the Krishnas proselytize their faith and solicit contributions. In its present usage, however, the term Sankirtan describes a religious rite vastly different from its original meaning in the Vaishnava Tradition. In premodern times, the Hindus did not believe that their religions should be aggressively proselytized throughout the general population. Furthermore, although solicitation was conducted by the Hindus, it was not considered to be a part of Sankirtan, and it was not practiced by the more religious members of the Hindu orders. A further comparison of the traditional and present forms of Sankirtan will be useful.

The origins of Sankirtan date back to the ninth century, A.D., when it is first referred to in the *Srimad Bhagavatan*, at a time when the notion of personal devotion to the deity was beginning to evolve. It was next mentioned in the *Bhagavad-Gita* some five hundred years later, and was then practiced in the form of ritualized movements, accompanied by the repetitious chanting of God's name. The central purpose of Sankirtan was to get closer to God and involve others in such worship. Solicitation for support of the religion seemed equally ritualistic, and took two forms -- solicitation to guarantee survival, and solicitation to support the construction of edifices. In either case, solicitation was rarely performed by the monks or the initiated faithful. Rather, this chore was shouldered by lay specialists who functioned as managers of the religion.

When approaching potential donors, these specialists were required to depend on "true speech and gentle speech." Moreover, they were immediately to identify their religious order and guru. Money could not be asked for directly, instead, the specialist would ask only for a contribution of food sufficient in amount to fill the outstretched palms, or enough clothing to enable survival under a tree. It was this fact that money was not asked for directly which separated those who were religious beggars from those who were not. Also, in the course of asking for a contribution, a prospective donor could never be touched without their permission. If money was needed to build an edifice, an announcement to that effect was made in the community, and the lay followers and others, such as the Maharajas and kings, would be asked to contribute. To summarize, traditionally, the practice of Sankirtan was considered a pure religious ritual, and was set completely apart both in principle and practice from the necessity to solicit funds for the religious support.

As already mentioned, the modern Krishnas have expanded the role of proselytizing in the religion, and have incorporated the solicitation of money into the practice of Sankirtan. It should be noted, however, that they have not excluded from the definition of Sankirtan, the traditional dancing and chanting which is still practiced today, though it is not the subject of this litigation. Nevertheless, in the process of redefining Sankirtan, the theoretical underpinning appears to have shifted dramatically from its traditional sense. As presently conceived by the Krishnas, Sankirtan is the process of propagating the "truth" of Krishna. The Krishnas profess that nonbelievers in the Lord Krishna are misguided souls who are spiritually impure because they attempt to exploit the Lord's material wealth for their own personal gratification.

To achieve a spiritual rebirth, divine instruction and full surrender to the Lord is necessary. The surrender takes the form

of giving up material possessions to the Krishnas for use in the service of the Lord, and for the support of the religion. The more material objects a person gives up -- objects that are diverted from self-gratification towards the service of the Lord -- the more the soul becomes purified. The process of purification is said to take place as soon as the material transfer is made. As a consequence, it is not significant, according to the Krishnas, that an individual understand the purpose of the donation. As stated succinctly by the Krishnas in one of their publications, they believe that "[t]he consciousness of the majority of people in present societies (including American) necessitates their donation of money to the Lord, Sri Krishna's service, for their spiritual purification and to provide the required means to ISKON's sankirtan work." [Appendix A to Plaintiffs' Trial Brief at p. 1].

To be a devotee of Krishna means to totally surrender personal material possessions, to take up the Lord's service, and to attempt to get others to surrender as well. The materially conditioned souls, or karmi, are viewed as diseased patients who, with the proper spiritual administrations by the doctoring Krishna devotee, will be able to return to spiritual health. In practice, the process of administering to the misguided souls is conducted wherever such souls tend to congregate. Thus, Krishnas are "dispatched" in organized parties varying in numbers, and headed by a Sankirtan leader. The parties are sent to the streets, airports, bus terminals, expressway rest stops, shopping centers, parks, national monuments, naval bases, convention centers, football games, horse and auto race tracks, college campuses, and to state and county fairs. This list is certainly not all inclusive. While Sankirtan parties are usually dispatched from a Krishna temple to a predetermined location such as those just enumerated, the Sankirtan leader is given discretionary authority to spread the "truth" at whatever locale will enable the party to reach the maximum numbers of people.

There is, nonetheless, a territorial limit to a Sankirtan party's wanderings. Each Krishna temple or farm is assigned a specific territory, and before a Sankirtan party can cross over into another temple's territory, permission must be obtained beforehand. For instance, the plaintiff New York City temple has assigned to it that City, northern New Jersey and the southern most counties of New York State. Yet, with the permission of the respective temples, the New York City temple has dispatched Sankirtan parties to the Eastern States Exhibition in Massachusetts and even to North Carolina for the State Fair in Raleigh. As another example, to "cover" the New York State Fair, the Krishnas have dispatched Sankirtan parties from their farm in West Virginia, their temples in Boston, Buffalo, Pittsburgh, Philadelphia, and a national traveling Sankirtan party called Radha Damodar which was once "based" in Pennsylvania. A temple's territorial allocation is decided by the Krishnas' governing body commission, which consists of twenty-three men representing different "zones" of the world, and overseas matters common to the Society. The plaintiff New York City temple is located in a "zone" which includes the northeastern United States, Puerto Rico and the Caribbean. Over the years as the movement has become more popular, other temples have been founded, and the New York City temple, once the only temple in the United States, has, as a result, seen its assigned territory become smaller and smaller.

Thus far, the Court has discussed why Krishnas are sent among the public and where they are sent; the next question that must be examined is how are they sent, or the methods employed by the Krishnas in their practice of Sankirtan. A considerable amount of testimony on this issue has been presented by both parties, and it has given this Court the opportunity, unlike that of any other court in a case involving the right of the Krishnas to practice Sankirtan, to understand the various methods employed by the Krishnas when performing this religious rite. The plaintiffs' perspective on their Sankirtan methods will be discussed first. This discussion will conclude with

the Krishnas' view of their previous experiences at the New York State Fair, and the ways in which the State Fair's booth restriction would effect their ability to practice Sankirtan and exercise their constitutional rights.

From the Krishna point of view, in order to understand how they conduct Sankirtan, picture the following scenario which supposedly occurred frequently at the New York State Fair. A member of the Krishna faith approaches a fair goer, makes an introductory remark, and simultaneously offers a prasada, or some small "sanctified" item such as an artificial flower, or food stuff. The purpose of this offering is to divert the fair goer's attention and thus enable the Krishna devotee to engage the fair goer in a conversation about the Krishna faith. Other items have also been used in the course of this introductory exchange, for example, a stick of incense, candy canes, or buttons. These buttons display various messages on them like "Keep on Truckin", "I Love New York" or have portrayed two racing flags. When a flower or button is used, it is typically pinned on the fair goer's person.

If the fair goer desires to engage the Krishna in a conversation, the Krishna devotee will attempt to sell the interested fair goer a religious book such as the Srimad Bhagavatem, the Sri Caitanya Caritamrta, Bhagavad-Gita As It Is, as translated by A.C. Bhaktivedanta Swami, some other "small book" written by him; or a religious magazine called "Back to Godhead" which is published by the Krishnas; or a religious record produced and recorded by the Krishnas. These records contain religious songs and chanting, and the record jackets acknowledge the contributions made to Krishna "projects" by such recording stars as Bob Marley, Bob Dylan, Stevie Wonder, Alice Coltrane, George Harrison, Richie Havens, and Neil Diamond. Whether or not the fair goer decides to purchase one of these items, the Krishna devotee will ask the fair goer to make a

monetary donation. Even if the fair goer does not make a contribution, usually the Krishna devotee would permit the fair goer to keep the prasada or token, and sometimes even the more religious paraphernalia if it had been shown to the fair goer. In this manner, the Krishna devotee spreads the "truth" of Krishna by giving the misguided souls an opportunity to rededicate their material wealth; attempts to disseminate as many books, magazines, and records as possible and obtain donations in order that another copy of these religious works may be reproduced; and, in the end, hopes to induce others to join the Krishna faith.

To learn how to perform Sankirtan, Krishna devotees are schooled by their religious superiors. Certain standard instructions on how to approach the misguided souls are given to Sankirtan parties by the Krishna priests or Brahmanas. The Brahmanas are instructed in turn by their spiritual masters, who rely on the Krishna scriptures for guidance. The devotees are told to appreciate the philosophical reasoning behind the practice of Sankirtan and to understand the "power" of its meaning. Moreover, they are instructed that, although they should be diligent about the task, they should rely on the Lord for their success. The devotee is instructed to act ideally, truthfully, and not to irritate anyone or touch them without permission. For instance, devotees are admonished never to say that the recording stars actually participated in making the Krishna records. The Krishna devotees are told to inform the public that these stars have helped the Krishnas in a number of their "projects," but that the stars do not perform on these records. The Brahmanas tell the devotee to think practically; if they force themselves upon the misguided souls at a particular locale, a scene will result, and most likely the Krishnas would not be permitted to return. One Krishna Brahmana summarized the instructions as follows:

> Very specifically we stress the point that was spoken by a great saint in our movement, that is in this particular day and age, example is more important than precept. The particulars are that you must behave according to the philosophy that you are trying to preach, and the principles, the qualities a sainted person may be expected to have, thus, you have to be humble, tolerant when people get angry or yell at you or if the authorities do something you may not think right, still you abide by what they say, if someone says no, then you don't repeatedly push them. [Transcript, April 22, 1980 at p. 71]

It must also be remembered that at the New York State Fair, the Krishnas stipulated to a certain code of conduct, that affected the manner, place and time at which they were able to approach fair goers. Due to these stipulations,[6] the Krishnas were to wear identification badges and display them prominently, register with fair authorities, only engage in Sankirtan with those fair goers who agreed, not to touch anyone without their consent, and restrict their Sankirtan activities to certain places and appropriate times.

The Krishna plaintiffs concede that despite taking great care to make certain that devotees act according to the standard instructions and stipulations, there are some "unfortunate incidents" where Krishna devotees violate these principles and guidelines, and these violations may even lead to arrests of devotees. There were, in fact one arrest of a Krishna devotee at the 1977 State Fair, six arrests in 1978, and nine arrests in 1979. Moreover, there were many informal complaints by fair goers against the Krishnas in 1978 and 1979. It is vigorously urged by the Krishnas that "[t]hese violations, if indeed they rose to that level of harm, were not encouraged or even condoned by the Sankirtan leader at the Fair or by those who prepare devotees for proselytizing and soliciting." [Plaintiff's trial brief at p. 19]. In addition, the Krishnas say that if a devotee's conduct causes complaints, the devotee would be removed from Sankirtan duties. The Krishnas provide three

explanations for these statistics. According to one Krishna Brahmana, who testified at the trial, the origin of some of the complaints results from the inexperience of new Krishna devotees:

> Well, they are not very confident. They are making a very big transition to become a devotee of Hare Krishna, it is kind of almost like a shock; a new acceptance of authority so they are not very confident and the temple techniques they are not just in a good -- they are not as smooth with the people.
>
> If a person is nervous when he is approaching another person, then he will immediately make the other person nervous. I give the example to them when I am training them just like if you approach a dog, the dog will pick up if you are afraid of him and therefore the dog will become aggressive so a lot of the problems with newer devotees doing Sankirtan is that they are not as confident, not as experienced, so their lack of confidence and ability to do Sankirtan would be picked up by the people they are meeting and generally that may cause some complaint, some difficulties.
>
> One other point in that regard, that is actually an important part that as a devotee performs Sankirtan his ability to present whether it is a record or a book or just even meeting and talking to some one improves in terms of being able to actually explain the philosophy because as he, you know, performs his daily service day after day he understands it more and more so, for example, myself when I do Sankirtan I am able to speak with professionals and people and actually carry on a very nice conversation presenting the philosophy according to how they can appreciate whereas younger, a younger man, he can't do that so he relies more on the mechanics. [Transcript, May 7th, 1980 at pp. 65-67].

The Krishnas also assert that some of these "conflicts" are merely misunderstandings, and inevitable occurrences at events like the New York State Fair. First of all, say the Krishnas, the New York State Fair administration has not been very conciliatory towards the Krishnas for the last three years. They

claim that the surrounding circumstances of at least one of the 1979 arrests suggest that some fair goers' complaints were aggressively solicited by the State Fair administration.

As further proof of a hostile attitude on the part of the State Fair administration, the Krishnas argue that if the liason system -- created by stipulation between the Krishnas and the State Fair administration -- had been properly utilized by the administration, most, if not all of the "incidents" could have been easily resolved. Under the liason system, each side was to designate a representative to whom complaints would preferably be taken before it was forwarded through more formal dispute resolution channels. The Krishnas say that such a liason system was successfully employed during the Eastern State Exhibition held annually in Springfield, Massachusetts. At the 1979 Exhibition, there were no arrests of Krishnas arising out of their Sankirtan activities, and all fair goer complaints were purportedly resolved through the liason system. The Krishnas also claim that when a complaint about them arises at any forum, and a member of the public desires a refund, such a request is always honored. Finally, the Krishnas assert that whenever an event draws between 600,000 and 700,000 patrons, there are bound to be a few among them who are going to be less than receptive to individuals propagating unfamiliar religious beliefs.

The Krishnas state flatly that they cannot practice Sankirtan from the confines of a fair booth. They base this conclusion on both religious dogma and considerations of practicality. The Krishnas believe that, by definition, the karmi or non-believer is so caught up in the material world and oblivious to Krishna that the devotee must initiate the process towards spiritual purification:

> Well, because of the nature of the conditioned soul is rebellious for Krishna, they don't want to serve Krishna. That is why they are in the material world. It is almost like a bad child but serving Krishna it's actually what he

> should do. You see, just like a child may not want to take some medicine but he is sick and if he takes the medicine, he will just get better. But if you try to give the child the medicine he will go, "No, No, I don't want that."
>
> So it is the task of the doctor or the mother to give him the medicine because she knows it's best. So we are approaching conditioned souls because they in their own right will not turn to Krishna. [Transcript, May 7th, 1980 at p. 88].

The Krishnas further maintain that, from a practical point of view, the fair goer is unlikely on their own to go out of their way to find a Krishna booth at the State Fair. This being the case, the Krishnas would be denied or restricted in their opportunity to spread the "truth," solicit contributions, and gain converts. In brief, the Krishnas believe that comparatively, the impact of the State Fair booth restriction on them is much more pronounced than its impact on commercial vendors.

The Krishnas commenced this action because, in their view, which, has now been supported by numerous decisions of the courts, their right to practice Sankirtan is protected under the First Amendment. *See e.g. United States* v. *Silberman*, 464 F. Supp. 866, 872 (M.D.Fla. 1979) and cases cited therein. Citing the case of *Murdock* v. *Pennsylvania*, 319 U.S. 105, 111 (1943), they argue that merely because religious literature is sold by "itinerant preachers" rather than donated does not mean that such sales are not protected by the Constitution. To the contrary, plaintiffs assert that the State Fair grounds are a public forum and therefore their activities may only be reasonably restricted by the State. While they say that the stipulated conditions they agreed to with the State Fair administration are reasonable conditions, the booth restriction is not and is therefore unconstitutional. *See, Edward* v. *Maryland State Fair*, ____ F.2d ____ (4th Cir. August 12, 1980); *ISKON* v. *Bowen*, 456 F.Supp. 437, *aff'd* 600 F.2d 667 (7th Cir. 1979), *cert. denied* 444 U.S. 643 (1979).

Besides, the defendants have not, according to the Krishnas, demonstrated a compelling state interest that would justify the booth rule. Concerns for reducing traffic congestion, the commercial success of other vendors, or the likelihood that fair goers may be put off by the Krishnas, they say, are insignificant when balanced against the fundamental rights of the Krishnas to freedom of speech, religion, and assembly. *See ISKON* v. *Bowen, supra,* at 443. The Krishnas additionally maintain that the booth restriction is not justified by the State's concern to police violations of the penal laws. This policing, they add, is best pursued by prosecutions of criminal law violations, than by restraining the free expression rights of many people in order to punish a few individuals. In short, the Krishnas believe that the First Amendment guarantees their right to circulate freely in the public areas of the New York State Fairgrounds for the purpose of proselytizing, soliciting, and accepting donations for their religious organization. They ask this Court to grant them a permanent injunction restraining the defendants from enforcing the booth rules.

Placing plaintiffs' legal arguments aside for one moment, the foregoing, in plaintiffs' view, is an accurate portrayal of their religious beliefs, and their code of conduct, which, they assert, entitles them to a constitutional license to conduct Sankirtan and roving solicitations at the New York State Fair. It should be noted that, for the most part, it is the only portrayal of the Krishnas that has been put before a court of law in the United States. Yet, the eleven days of trial have provided this Court with an opportunity to evaluate testimony that expands upon and contradicts much of what has just been presented as plaintiffs' evidence. This evidence is both highly revealing and relevant to the central issue this Court addresses today. For the integrity of the record, however, it must be said that the testimony remains incomplete. This is due entirely to the actions of plaintiffs, who did not in good faith comply in a timely or

complete manner with this Court's Order requiring the production of various documents and things. That order, dated April 16, 1980, mandated that plaintiff produce various materials, including financial records, which would have enabled the Court to verify many of plaintiffs' claims with regard to the manner in which they conducted Sankirtan at the previous New York State Fairs.

To fully understand the Krishna practice of Sankirtan, let us retrace our steps, using the record of this case as our guide. We shall begin be re-examining two themes stressed by plaintiffs, but in a slightly different light: The first is the fact that, by their own admission, a central motivation behind the practice of Sankirtan is the collection of money. As we know, the Krishnas subscribe to the view that the more money they collect, the more spiritual benefit the contributor receives. Money is very important to the Krishnas. They hold money-raising marathons, and Krishna devotees are awarded "lakshmi points" for the amount of money they raise. When Krishna devotees become proficient at practicing Sankirtan and collecting money, they are given collection quotas by their Brahmanas or priests, some as high as $100.00 to $200.00 a day. In short, while the collection of money in the Krishna faith has spiritual significance, from a practical perspective, the Krishna devotee is under pressure to collect it for its own sake.

The second theme concerns the Krishnas' view of the karmi or nonbeliever. The karmi were typically referred to by the Krishna devotee witnesses at trial as either being "diseased", "illusioned", "misguided", "dogs", or "children." Although Krishnas claim that Sankirtan is an important religious ritual used to spread the "truth" of Krishna, one of plaintiffs' exhibits states: "[t]he Lord Himself as the Super soul within his heart purifies [the nonbeliever] from his maternal attachments, even if he doesn't fully understand the spiritual significance of his donation." The evidence submitted at trial revealed that this

statement has a practical translation -- it is not important to the Krishnas that the karmi understand the "meaning" of their contribution, be involved in a religious discussion about Krishna, or, as will be expanded on momentarily, even be able to recognize the religious identity of the devotee. A third theme was also raised by the Krishnas, and that is the devotee should rely on the Lord for success in practicing Sankirtan. The following would indicate that they do not. Let us now re-examine the Krishnas' solicitation methods with the considerable aid of additional trial testimony on the Krishnas' Sankirtan habits.

III.

The Krishnas have a very distinct style of appearance and dress compared to customary western fashions. For instance, Krishna males sport shaven heads except for a thin braided ponytail. On their faces, both males and females wear ceremonial "tilak" paint, which is muddy green in color. For their clothing, the males wear "dhotis" or an Indian style dress-like garment, and the females wear "saris", or the feminine version of the same thing. Both males and females wear "tulsi" beads around their necks and frequently carry burlap pouches or satchels. Usually, Krishna devotees appear this way in public and are commonly seen in the streets in large groups, dancing and chanting, which is the traditional form of Sankirtan. Yet, at the New York State Fair, when the Krishnas performed their modern version of Sankirtan, they literally adopted disguise. The men wore wigs to cover up their heads, and they donned western styled dress. One Krishna stated at trial that because of the disguise, people feel more at ease when solicited. Before addressing this claim, let us take a closer look at how this disguise is employed. To do so, we must first re-examine the method by which Krishnas are trained to practice Sankirtan.

In the first place, solicitation is not required of all devotees. At their farm in Port Royal, Pennsylvania, for example, only a

very few devotees ever engage in Sankirtan. The same is true of the urban temples. In New York City, the Krishna temple has between 600 and 1000 members, 190 of whom live at the temple. Solicitors are taken only from among those who live at the temple, and of that group, only 25 or so participate. To learn how to solicit, devotees are given classroom and on-the-job training. The instructions and the manner in which they are carried out are the same from temple to temple. The classes seem to service the purpose of "psyching" devotees up for their solicitation duties. They are encouraged to be aggressive when soliciting and to try to get as much money from the karmi as possible. Moreover, they are told that the best way to please their spiritual master is by doing such duties well. This statement holds special significance to the Krishnas because spiritual masters hold great power over devotees. If a devotee is told by a spiritual master that a snake is a stick and to pick it up, then the devotee is to comply. Creativity in soliciting is also encouraged. Devotees are told to figure out ways to get the karmi to donate more money. For example, at Christmas time, the most common Krishna ploy is to dress up as Santa Claus and give out candy canes while soliciting contributions.

More specific instructions are given during the on-the-job training. New devotees are usually sent out with senior devotees who the Brahmanas or priests consider to be experienced at Krishna methods of solicitation. The new devotees are told to follow the directions of their instructor. For example, one ex-devotee from the Baltimore temple was sent out by her Sankirtan leader with two of the best female solicitors of the temple. She was instructed not to wear an identification badge and, if possible, to avoid verbally affiliating herself with the Krishnas to potential donors. If someone were to ask her affiliation, she was taught to try to confuse that person by slurring the word "Krishna" into sounding like the word "Christian." She was also instructed to make up "purposes" for requesting

donations. For example, she was told to say that she was soliciting for worldwide education and food distribution programs or children's drug programs. She was further told that it was all right not to ask people's permission before pinning a button or artificial flower on them. As for the religious records which were used for solicitation purposes, potential donors were informed that the musical stars mentioned on the back of the albums actually performed on the albums. According to her testimony, the devotees would only rarely discuss religion with a prospective contributor. Religious discussions were considered a nuisance to the devotees, especially when they solicited at places with a lot of people, because such conversations would cut down on the amount of soliciting that could be done.

Other techniques for increasing monetary contributions included: flirting with males, attempting to get people to donate larger bills, intentionally miscounting change, folding over bills to shortchange people, and holding large bills for a long time in an effort to make the donor tired of the idea of getting the desired amount of change back. The junior devotee was told that it was all right to lie to security personnel in order to obtain the right to solicit at an airport, and to enter private premises to solicit without permission. She was taught to target people such as navy men as easy marks. Once her instructor took her to a nearby naval base on its monthly pay day. Apparently, the Krishna instructor's secret ambition was to get a serviceman to "donate" his entire monthly pay check to the Krishnas. Asked by defendants' counsel whether these incidents were isolated events, perpetrated by overzealous devotees, the ex-devotee responded: "It was their normal enthusiasm, they had done it for a long time."

Indeed, the Court learned that these incidents were not isolated, and they were not the acts of a small handful of "immature" or "inexperienced" devotees. In fact, almost without exception, the testimony of this ex-devotee should be looked

upon as an index of the different soliciting methods habitually employed by the Krishnas. As proof of this, we will examine the complaints of fair goers and other local citizens concerning the solicitation habits of the Krishnas in the past three New York State Fairs and in the Syracuse area as a whole. Before doing so, however, let us first take a closer look at just how experienced many of the Krishnas are at soliciting, and the attitude of some of the Brahmanas, or priests, of the religion towards those devotees who conduct Sankirtan.

As previously mentioned, one Krishna priest testified at trial that complaints about the Krishnas' solicitation methods are due primarily to the actions of inexperienced devotees, hostile fair officials or fair goers. In addition, the Krishnas claim that if complaints are received by them about a devotee's solicitation methods, that devotee is removed from the Sankirtan party. These statements are absolutely untrue. For instance, the Krishna priest who made the statement, Christopher Kelly, is not only a priest of the Krishnas, he has performed Sankirtan for over six years, and even gives instruction on its practice to "spiritually advanced" devotees. Mr. Kelly was arrested at the 1979 New York State Fair. Despite his "qualifications," the arrest allegedly grew out of a soliciting incident involving a 14 year-old boy. The boy's statement is quoted in part below:

> This guy came up to me, who was later identified to me as being Chris Kelley, and he stuffed an album, record album, under my arm. He told me he was giving me the album and then he asked me for a small donation so I gave him some change, it was either 30 or 35 cents. He said, "Give me a bill and I'll give you some change." So I pulled a dollar bill and he said, "No give me a twenty." He saw the twenty dollar bill that I pulled out of my pocket. I thought he was going to give me nineteen dollars back and he only gave me back ten dollars. I gave him the album back and told him that I wanted my money back. I gave him the album and he said, "Don't push that at me." I told him I wanted my money back again and he gave me back the twenty and then I told him I wanted the

one dollar back too and he gave it back to me. They left and I went to get my clothes out of my car and went back and reported it to the trooper.

Although he has been arrested and convicted many times for illegal solicitation, another Krishna devotee who is still involved in soliciting is Raymond Kissane. His solicitation technique would indicate that he is anything but the portrait of the culturally shocked, hapless, and unconfident devotee whose actions, according to the Brahma quoted earlier in this opinion, may result in solicitation complaints. Mr. Kissane has at least six arrests and convictions involving illegal solicitations dating back to 1976. He was arrested and convicted at the New York State Fair in 1977 for disorderly conduct after a 15 minute spree in which he jumped in front of as many people as he could on a pedestrian ramp, grabbing people by the arm as they went along. More recently, Mr. Kissane was arrested at the 1979 North Carolina State Fair and was charged with three counts of false pretenses, when he allegedly misrepresented the content of records and shortchanged fair goers. He pleaded no contest to a reduced charge of larceny by trick.

Still another Krishna devotee, James Griffith, was arrested three times at the New York State Fair in 1979. Needless to say, he was not removed by the Krishnas from soliciting after his first arrest. One incident allegedly grew out of a combined "money-holding" and shortchange scam. Two others involved placing records under people's arms as they were walking, in order to get their attention. There were other multiple arrests of Krishnas as well. Richard Banbury, a Krishna devotee, was arrested at the 1978 State Fair for harrassment; the charge was subsequently reduced, and adjourned in contemplation of dismissal. He visited the State Fair once again in 1979 and was arrested and convicted for disorderly conduct.

APPENDIX A — Memorandum-Decision and Order of Munson, J., dated August 25, 1980.

These are only a sampling of Krishna arrests and convictions growing out of their solicitation activities which directly or indirectly relate to the Krishna claim that they use honest solicitation techniques at the New York State Fairs. None of the facts underlying these incidents reflect the inexperience of the Krishna devotees at soliciting or the hostility of fair officials or fair goers. Quite the contrary, these individuals are experienced at what they do, and the Krishnas deliberately permit them to continue performing illegal solicitation techniques, even though such techniques frequently lead to the arrest and conviction of Krishna devotees. It would seem that so long as the Krishnas financially benefit from such techniques, one can expect there will be similar arrests and convictions in the future.

A Krishna Brahmana is quoted above as saying that "in this day and age, example is more important than precept. The particulars are that you must behave according to the philosophy that you are trying to preach . . . ." Consider this statement along with the following and final example of the fact that the Krishnas continue to financially benefit from the services of individuals who they know employ overly aggressive solicitation techniques, but who are not removed from Sankirtan duties. At one point during the trial, counsel for plaintiff asked the ex-Baltimore devotee, whose escapades are described above, whether her two women instructors could properly be characterized has "crooks." She answered in the affirmative. Subsequently, a Brahmana supervisor, Steven McLain, who oversaw the activities of these women instructors, was asked by defendants' counsel whether he considered the woman known as the more aggressive of the two to be a crook. He responded in the negative. In fact, even though Mr. McLain had learned of numerous complaints arising out of the aggressive solicitation habits of this particular individual, he assigned her to teach fledgling Krishnas, such as the ex-Baltimore devotee, how to do the same. The Court now turns to a more detailed analysis of

how the Krishna solicitation techniques were employed at previous New York State Fairs, and in and around the Syracuse community as a whole at the time of the State Fairs.

As the Court learned from the trial testimony, a common practice of the Krishnas is to "target" their prospective donors. The Krishnas do not rely merely on indiscriminate solicitation. They pick on certain types of people, or people in certain situations, when they solicit. Once such group is teenagers, especially those who appear unsophisticated. A complaint involving a teenager has already been described, and it is one of several complaints involving teenagers. Another group that is "targeted" is couples with young children. The Krishnas discovered that these couples are easy marks because they cannot afford to divert their attention for very long from watching the children. Thus, the persistent Krishna solicitor can be relatively assured of a contribution, just so he will go away and let the couple go about their business.

Sadly, still another group that is "targeted" is the handicapped. At least two incidents at past New York State Fairs resulted when Krishna devotees approached groups of retarded adults and pinned flowers on them while, at the same time, asking for contributions. Many of these adults clearly were startled because they did not understand what the Krishnas were doing. Obviously the Krishnas knew they would not and sought to use this fact to their advantage. Individuals who appear to be mentally slow or very unsophisticated are also "targets." On September 1, 1978, which was during the week of the 1978 State Fair, one such individual was approached in downtown Syracuse by a female Krishna devotee, who almost succeeded in obtaining a "contribution" of $80.00 through the use of the "wad of bills" technique which is explained below. The entire incident was observed by a plainclothes police officer who forced the devotee to return the money. The same female devotee then went across the street, and was involved

in another soliciting incident with a young boy when she allegedly would not return is $10.00. Had the officer not intervened in both cases, the Krishna devotee would have succeeded, as the next example of "targeting" demonstrates.

In a related incident which occurred the same day and in the same vicinity, a twenty-four year old girl afflicted with cerebral palsy was waiting for a bus to take her home from work. She was approached by a female devotee who pinned an artificial flower on her without her permission, and asked for a donation for "starving children". When the young woman reached in her purse for her wallet to make a $1.00 donation, the devotee stood on her tiptoes and observed that the wallet contained some larger bills totaling $20.00. The devotee asked the young woman to exchange the larger bills for all of the dollar bills that she was holding. The young woman agreed to do so and expected $19.00 in change. She was not to receive it. The Krishna devotee handed her a copy of the *Bhagavad-Gita* and "took off" without giving her the change.

It has already been described how at the New York State Fair the Krishnas conceal their religious identity from people by wearing western dress. There were many incidents of the Krishnas' attempt to further cloud their identity by hiding their identification badges, which read "ISKCON", not the religion's popularly known name "Hare Krishna", from being clearly visible, or not wearing them at all. This tactic was revealed by the ex-Baltimore devotee as being purposeful. Another device used by the Krishnas is to carry someone else's identification card. By not properly displaying their identification badges the Krishnas not only concealed their identity, but they were in violation of a Court order requiring them to do so.

For the past three years the devotees at the New York State Fair have routinely misrepresented their Krishna affiliation as well. This is accomplished in two different ways. First, by

misrepresenting the organization that they solicit for, and second by misrepresenting the items that they sell. The most frequently used lines at past State Fairs represented to the fair goer that the devotee was either soliciting for the benefit of crippled children's hospitals, drug addicts, or retarded children. These are not true statements even if broadly construed. If a religious book or record was sold, Brahmana testimony at the trial indicated that the money was used to produce another book or record. The remainder of the contributions are used to support the various temples or farms. For example, at the 1978 State Fair, contribution money was used to bail out arrested Krishnas from jail. Aside from the admissions made during trial, which the Court believes is dispositive of this issue, the Krishnas refused to comply with this Court's Order compelling them to turn in to the Court their financial records which would conclusively prove the matter one way or another. Some information was handed over, however, it was subsequently conceded by plaintiff's treasurer Scott Ellis to be inaccurate. Therefore, the Court must assume that accurate proof of plaintiff's claims of soliciting on behalf of charity does not exist.

Krishnas have also fabricated stories portraying themselves as representatives of contests giving away records to the 50 best-looking couples, or as radio station employees willing to give lucky fair goers a record if they named the correct radio station. Needless to say, the Krishnas did not care which station the fair goer named. This assumption was borne out when one plainclothes police officer named a television station from a distant city and was told by the devotee that it was the correct answer. Without exception, after a fair goer "won" the record by naming some type of station, the Krishna devotee, still without identifying their true identity, asked for a contribution. As noted above, the use of such stories was also employed at the Baltimore temple, and the Krishnas used similar stories at the Erie County Fair and the Eastern States Exposition.

The Krishnas also misrepresented their affiliation by the various items they sold for a contribution. Artificial flowers and "Keep On Truckin" buttons have no religious significance, but of course they were selected as such because they did not. The items were used strictly because they could be rapidly sold without any questions -- especially questions about the Krishna religion. The most commonly used items were the religious records. It is difficult to tell they are religious albums just by looking at them. They are packaged to look like the records of popular recording artists, and the word ISKCON only appears in small lettering on the back. The records are first pitched to the fair goer and if they show no interest, the Krishna devotee then turns the record over to show that it contains performances of the Beatles or Stevie Wonder. One women was startled to discover that her Stevie Wonder album sounded like a "cat in heat," and she could not figure out why Stevie Wonder would want to ruin his career like that. What she had actually heard was a typical Krishna song. The same kind of record scam was used in Baltimore, the Erie County Fair, and the Eastern States Exhibitions. Even though the Krishnas have received many complaints about the representations they make with respect to these records, they continue to use them and have yet to alter the misleading packaging. The Court cannot help but conclude that the Krishnas are only interested in taking money from people and care very little about the means they use to get it.

It is not unusual for those means to be more forceful. Sometimes a victim's money is taken outright and the devotee disappears in the crowds. At the State Fairs, devotees also used various short-change tricks such as those described by the ex-Baltimore devotee. For instance, dollar bills were folded over to look like more bills were underneath; devotees would intentionally hold money and pretend to be making change while hoping to distract the fair goers with conversation so that they would forget how much change they asked for; devotees would

ask for larger bills because they were constantly able to pressure a person into giving more money if they could get a larger bill to make change from. The "wad of bills" scam was also employed, whereby a Krishna would ask to exchange their singles for bills with larger denominations. Once they got the bill in their hand, they would either not give the correct change or they would "take off" into the crowd. Without exception, fair goers were pinned with an artificial flower or candy without their permission. One woman complained that after she declined to give a contribution for the flower pinned on her blouse, the devotee tore the flower off her and called her a demon. A similar incident happened with another fair goer. This individual was approached by a Krishna devotee and correctly named a radio station and won a record as a "prize". He was then asked to make a contribution which he refused to do because, as he understood it, the record was free. The devotee then tried to grab the record out of his hands. When he failed to do so, he followed the fair goer and cursed him as he walked. As mentioned above, there were numerous other arrests of devotees at the 1977, 1978, and 1979 State Fairs. Some of these arrests have led to convictions, some of the defendants skipped bail, and the remaining charges are still pending.

One of the only things that the Krishnas did not do at the State Fairs was to discuss their religion with fair goers. Despite the Krishna claims that Sankirtan is the means by which they spread the "truth" of Krishna and gain converts, they did not appear to engage in any sort of religious discussion with the fair goers. At trial, each witness who was approached by the Krishnas and asked for money confirmed that the Krishnas made no mention of their religion at all. Some witnesses claimed they were given some sort of magazine by the devotees but they did not know what the magazine was about. This lack of knowledge can only be attributed to the fact that the Krishnas never explained their religious paraphernalia to the fair goers and rarely identified or explained their affiliation.

It should also be noted that Krishna devotees were found to have flagrantly violated the terms of the stipulated conditions made part of the Court's Orders granting the plaintiffs preliminary injunctions for the 1978 and 1979 State Fairs. Problems with identification badges was already mentioned. Other violations include failing to: register devotee identities, engage in solicitation in a peaceable manner and without harassment to the public, ask fair goers' permission before touching them, honor the requirement that they not solicit within 10 feet from an exhibition or booth, or solicit fair goers sitting on a bench or waiting in a ticket line. Other violations of Court Orders included entering the fair grounds for solicitation purposes during a period when Krishnas were ordered not to do so and trying to enter the fair grounds without paying the price of admission. Similar problems were also experienced with violation of the stipulated agreement at the Eastern States Exhibition.

IV.

Plaintiffs bring this action under 42 U.S.C. §1983, claiming that their First Amendment rights will be violated if their Sankirtan activities are confined to a booth. Before the Court addresses these alleged violations of plaintiff's constitutional rights, it must first consider whether the alleged actions of defendants amount to "state action", which is the jurisdictional prerequisite of Section 1983. In *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345, 351 (1974), the Supreme Court held that for state action to exist there must be a "sufficiently close nexus between the State and the challenged action of the [defendant] so that the action of the latter may be fairly treated as that of the State itself." *See, Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961); *Graseck* v. *Manceri*, 582 F. 2d 203, 207-09 (2d Cir. 1978), *cert. denied*, 439 U.S. 1129. In the present case, neither party disputes the fact that as administrators of the New York State Fair, and responsible for the

regulations in dispute, the actions of defendants demonstrate a sufficiently close nexus with the State of New York. The Division of the State Fair and the New York Industrial Exhibit Authority are both state agencies that exist at the pleasure of the State Legislature for purposes of operating the State Fair. The State provides these agencies and the Fair with its operating budget, fair grounds and buildings, and State Police patrols. In sum, the actions of these defendants in enacting and enforcing the booth rules are "state action" and therefore the Court may properly exercise jurisdiction over plaintiffs' constitutional claims which will now be addressed.

The right of a citizen to form, hold, and express opinions and beliefs in a public forum is so essential to our democracy that it is considered to be "fundamental." *Schneider* v. *State*, 308 U.S. 147, 161 (1939). This proposition is reflected in the fact that "[w]herever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens discussing public questions." *Hague* v. *CIO*, 307 U.S. 496, 515 (1939); *Kunz* v. *New York*, 340 U.S. 290, 293 (1951). At the same time, these First Amendment rights are not absolute. *Murdock* v. *Pennsylvania*, 319 U.S. 105, 110 (1943); *Cox* v. *New Hampshire*, 312 U.S. 569, 574 (1946). While the government has no power to regulate communication or belief because of its content, *Grayned* v. *City of Rockford*, 408 U.S. 104, 115 (1972); *Police Dep't of Chicago* v. *Mosley*, 408 U.S. 92, 95 (1972); *Cohen* v. *California*, 403 U.S. 15, 24 (1971); *Street* v. *New York*, 394 U.S. 576 (1969); *New York Times* v. *Sullivan*, 376 U.S. 254, 269-270 (1964), *Niemotko* v. *Maryland*, 340 U.S. 268 (1951), *Cantwell* v. *Connecticut*, 310 U.S. 296, 305 (1940), it may restrict the exercise of First Amendment rights if justified by compelling public interests. *Grayned* v. *City of Rockford*,

408 U.S. 104, 115-16 (1972); *Police Dep't* v. *Mosley*, 408 U.S. 92, 98 (1972); *Adderly* v. *Florida*, 385 U.S. 39 (1966); *Cox* v. *Louisiana*, 379 U.S. 536, 554-55 (1965); *Sherbert* v. *Verner*, 374 U.S. 398 (1963).

Still, even when regulations are justified because of a compelling public interest, the regulations must be written as to reasonably restrict the time, place and manner of the right involved. As held by the Court in *Virginia Pharmacy Board* v. *Virginia Consumer Council*, 425 U.S. 748, 771 (1976): "[w]e have often approved restrictions [on time, place and manner] provided that they are justified without reference to the content of the regulated speech, that they serve a significant governmental interest, and that in so doing they leave open ample channels for communication of the information." *See, Grayned* v. *City of Rockford*, 408 U.S. 104, 115-16 (1972); *Jamison* v. *Texas*, 418 U.S. 413 (1943); *Martin* v. *Struthers*, 318 U.S. 141 (1943); *Cox* v. *New Hampshire*, 312 U.S. 569, 574-77 (1941); *Cantwell* v. *Connecticut*, 310 U.S. 296, 304 (1940); *Schneider* v. *State*, 308 U.S. 147, 160-61 (1939); *Concerned Jewish Youth* v. *McGuine*, No. 79-7456 (2d Cir. March 27, 1980); Tribe, *American Constitutional Law* 687 (1979). The balancing process which must be applied in these situations has been stated as follows:

> Although American constitutional jurisprudence, in the light of the First Amendment, has been jealous to preserve access to public places for purposes of free speech, the nature of the forum and the conflicting interests involved have remained important in determining the degree of protection afforded by the Amendment to the speech in question.

Lehman v. *City of Shaker Heights*, 418 U.S. 302-03 (1974). *Hague* v. *CIO*, 307 U.S. 496, 515-516 (1939).

There are other limitations on the type of regulation that may be utilized. For example, where discretion is vested in administrative officials it must be appropriate, and placed under

specific guidelines so as not to be unbridled. *Shuttlesworth* v. *Birmingham*, 394 U.S. 147 (1969); *Cox* v. *Louisiana*, 379 U.S. 536, 555-558 (1965); *Staub* v. *City of Baxley*, 355 U.S. 313, 321-325 (1958); *Saia* v. *New York*, 334 U.S. 558, 560-62 (1948). Even when regulations are authorized by explicit and narrow legislative authority, they must be "narrowly tailored to further the State's legitimate interest, *Grayned* v. *Rockford*, *supra*, 408 U.S. at 116-17; *Police Dep't* v. *Mosley*, *supra*, 408 U.S. at 98, *Cox* v. *New Hampshire*, 312 U.S. 569, 575-76 (1941), and great weight must be given to the fact that communication is involved. *Talley* v. *California*, 362 U.S. 60 (1960), *Schneider* v. *State*, *supra*. The State, moreover, bears the burden of justifying restrictions, *Cohen* v. *California*, 403 U.S. 15, 20 (1971). And finally, any regulation which takes the form of a prior restraint is subject to exacting scrutiny. *Southeastern Promotions Ltd.* v. *Conrad*, 420 U.S. 546, 558 (1975); *Organizations for a Better Austin* v. *Keefe*, 402 U.S. 415, 419 (1971). In brief, First Amendment rights "must not, in the guise of regulation, be abridged or denied." *Hague* v. *CIO*, 408 U.S. 104, 117 (1972).

Unlike many other regulations challenged by the Krishnas, the regulation at issue in the present case does not, in any fashion, restrict the Krishnas right to discuss their religion with anyone or distribute religious paraphernalia on any part of the fair grounds at any time. *Compare Edwards* v. *Maryland*, No. 79-1545 (4th Cir. August 12, 1980) (solicitation and distribution of literature confined to a booth); *ISKCON* v. *Bowen*, 456 F. Supp. 437 (S.D. Ind. 1978) *aff'd* 600 F.2d 667 (7th Cir. 1979) *cert. denied* 444 U.S. 643 (1979) (solicitation and distribution of literature confined to a booth). Furthermore, the regulation at issue here does not limit the number of persons that may solicit on the fair grounds at any one time. *Compare ISKCON* v. *McAvey*, 450 F. Supp. 1265 (S.D.N.Y. 1978) (limits solicitors at World Trade Center to ten). The regulation makes no

relevant distinction on the basis of the content, nor does it grant an official unbridled discretion to deny Krishnas the right to solicit. *Compare ISKCON* v. *Kearnes*, 454 F. Supp. 116 (E.D. Cal. 1978) (permits issued to those who "probably will not" engage in fraud.) And it is not challenged as being vague or overbroad on its face. *Compare, ISKCON* v. *Eaves*, 601 F. 2d 809 (5th Cir. 1979).

Instead, the present regulation merely requires that "all solicitation for either contributions or sale must be made from within the confines of a booth or display." It should be noted that there is also a license requirement mandating that a fee be paid for the exhibit space. This fee requirement was not made an issue during the trial of this action by plaintiffs and the Court does not address it today. Plaintiffs did not offer proof on the extent of the fee, and thus the Court is without any evidence to conclude whether the booth fee is a "nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question." *Murdock* v. *Pennsylvania*, 319 U.S. 105, 113-14 (1943), or whether it is a "flat license tax the payment of which is a condition of the exercise of . . . constitutional privileges." *Id.* at 112.

With these preliminary matters out of the way, the Court can narrow the issues that need to be addressed. The present case does not involve questions of prior restraint due to license fees or the inability of plaintiff to move about and distribute literature, or engage in religious discussions. Neither does this case deal with the issue of whether a regulation discriminates in treatment because of the content of the speech. Defendants have made no attempt to ban plaintiffs from the fair due to a judgment on defendants' part concerning the nature of plaintiff's religious beliefs. There is also no claim by plaintiffs that the booth restriction grants administrative officials unbridled discretion in granting or denying plaintiffs a booth. Even though a "public welfare" standard for booth content is to be

found in the disputed regulation, plaintiffs have not challenged this provision and it is not applicable here. In addition, plaintiffs do not claim that defendants' regulation is void for vagueness. It would seem that plaintiffs' claims that the booth restriction violates their rights to freedom of speech, religion, and assembly commonly evolve from the constitutional doctrine of overbreath, as applied. *See Generally, Grayned* v. *City of Rockford*, 408 U.S. 104, 114-15 (1972). In other words, it is plaintiffs' claim that the booth restriction is not a reasonable time, place, and manner regulation. The thrust of plaintiffs' claim is that there is a less restrictive means by which defendants can regulate plaintiffs' First Amendment rights and still accommodate the State's legitimate regulatory interests. Before addressing this argument, the Court will first examine whether the State Fairgrounds is a "public forum" or an arena traditionally associated with the exchange of views among the public and thus increasing the burden on the State to justify the extent of its regulatory scheme. *See generally*, Tribe, *American Constitutional Law* 690 (1979); Stone, "Fora Americana: Speech in Public Places," Sup. Ct. Rev. 233 (1974).

Where places of social commerce are generally reserved or associated with the exercise of First Amendment rights, then it is incumbent on the state to demonstrate a compelling interest in its regulatory scheme, which must, as a consequence, be drawn with narrow time, place, and manner regulations. *See Wright* v. *Chief of Transit Police*, 558 F.2d 67, 68 (2d Cir. 1977) (subway station held to be public forum); *Wolin* v. *Port of New York Authority*, 392 F.2d 83, 92-93 (2d Cir. 1968) (bus terminal held to be public forum). Defendants assert that the State Fairgrounds is not a public forum. According to them, the state fair is a "non-traditional" forum, whose chief purpose is as a place to house agricultural and industrial exhibitions, and to support educational and competitive junior activities. The Fairgrounds, maintain defendants, cannot be

equated on a constitutional basis with a park or a street corner "immemorially . . . held in trust for the use of the public, and, time out of mind, . . . used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague* v. *CIO*, 307 U.S. 495, 515 (1939). The Court cannot agree. In the words of Judge Higginbotham, "[a] fair is almost by definition a congeries of hawkers, vendors of wares and services, purveyors of ideas, commercial, esthetic and intellectual." *ISKCON* v. *State Fair of Texas*, 461 F. Supp. 719 (N.D. Tex. 1978). It would be unreasonable to hold that the New York State Fair could accurately be described as substantially different in purpose or effect. Still, merely because the State Fair is a public forum does not mean that it is excepted from the reasonable regulations of time, place and manner. *Lehman* v. *City of Shaker Heights*, 418 U.S. 298, 317 (1974); *Wright* v. *Chief of Transit Police*, 558 F.2d at 68; *Wolin* v. *Port Authority*, 392 F.2d at 89. This issue shall now be discussed.

Plaintiff asserts that the booth restriction is an unreasonable method by which to regulate the Krishnas' solicitation activities. They claim that the government interests raised by defendants, such as to prevent traffic congestion, insure public safety and to protect the public from fraud, do not justify their confinement to a booth. In plaintiffs' view, defendants have not offered any serious evidence of disruption in traffic as a result of plaintiffs' Sankirtan activities. With regard to fraudulent behavior, plaintiffs assert that any fraud perpetrated by devotees are isolated instances, and may be adequately dealt with by criminal prosecutions. Plaintiffs additionally point out that agreements with other fair administrations have been less restrictive than the booth requirements of defendants and have permitted Krishnas to practice Sankirtan. Finally, where liason systems have been employed in good faith, plaintiff assert that complaints have been resolved, and the need for arrests has been eliminated.

In contrast, defendants contend that the New York State Fair booth rule is a reasonable time, place, and manner regulation which is justified by compelling government interests. Defendants place the foundation of their argument on the State's interest in preventing fraud. They point to their previous experience with the Krishnas as proof positive of the necessity of the booth rule to combat plaintiffs' fraudulent activities. The Krishnas solicitation activities, say defendants, also demonstrate the need for a booth rule to control pedestrian traffic. Defendants argue that the booth rule is additionally necessary to protect the rights of exhibitors and fair goers to communicate with each other, and the rights of the fair goers to choose or decline access for communication, and assures the equal treatment of political and religious organizations.

The issue in this case is a narrow one. That is, whether it is constitutionally permissible for a State Fair to require that solicitation of money for religious purposes be restricted to a booth. While plaintiffs claim that their rights to freedom of speech, religion and assembly would be violated if their Sankirtan activities are restricted to a booth, they do not dispute that even these activities are subject to reasonable time, place, and manner regulations. This rule was succinctly stated as follows:

> The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise.

Cantwell v. *Connecticut*, 310 U.S. 296, 305 (1940). Although the Krishnas claim that their very act of soliciting is a religious belief, the test just enumerated is applicable nonetheless. Furthermore, the Supreme Court has held "that when 'speech' and

'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." *United States* v. *O'Brien*, 391 U.S. 367, 376 (1968) (burning draft card found to be unprotected speech); *accord Ohralik* v. *Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978); *see also Sherbert* v. *Verner*, 374 U.S. 398, 403 (1963) (challenge to unemployment compensation act by Seventh Day Adventist where law required that individual remain available to work Saturdays). The Court will assume for purposes of this analysis that the very act of exchanging money does carry with it some religious significance for the Krishnas. However, even the Krishnas concede that the monies collected in Sankirtan are also significant to them for its purely commercial value to support the religion. [Plaintiffs' trial brief, Appendix A ¶B]. To the extent that they do, the Court is hard pressed to distinguish between the solicitation activities of Sankirtan and purely commercial speech which the Supreme Court has said deserves the least constitutional protection. In *Va. Pharmacy Bd.* v. *Va. Consumer Council*, 425 U.S. 748, 771-72 (1976), the Court held:

> Untruthful speech, commercial or otherwise, has never been protected for its own sake. *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 340 (1974); *Konigsberg* v. *State Bar*, 366 U.S. 36, 49, and n. 10 (1961). Obviously, much commercial speech is not provably false, or even wholly false, but only deceptive or misleading. We foresee no obstacle to a State's dealing effectively with this problem. The First Amendment, as we construe it today, does not prohibit the State from insuring that the stream of commercial information flow cleanly as well as freely.

The Court continued its statement in an accompanying footnote which is worth quoting at length:

> [24]In concluding that commerical speech enjoys First Amendment protection, we have not held that it is wholly undifferentiable from other forms. There are commonsense differences between speech that does "no more than

propose a commercial transaction," *Pittsburgh Press Co.* v. *Human Relations Comm'n*, 413 U.S., at 385, and other varieties. Even if the differences do not justify the conclusion that commercial speech is valueless, and thus subject to complete suppression by the State, they nonetheless suggest that a different degree of protection is necessary to insure that the flow of truthful and legitimate commercial information is unimpaired. The truth of commercial speech, for example, may be more easily verifiable by its disseminator than, let us say, news reporting or political commentary, in that ordinarily the advertiser seeks to disseminate information about a specific product or service that he himself provides and presumably knows more about than anyone else. Also, commercial speech may be more durable than other kinds. Since advertising is the *sine qua non* of commercial profits, there is little likelihood of its being chilled by proper regulation and forgone entirely.

Attributes such as these, the greater objectivity and hardiness of commercial speech, may make it *less* necessary to tolerate inaccurate statements for fear of silencing the speaker. [Emphasis Added]. Compare *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964), with *Dun & Bradstreet, Inc.* v. *Grove*, 404 U.S. 898 (1971). They may also make it appropriate to require that a commercial message appear in such a form, or include such additional information, warnings, and disclaimers, as are necessary to prevent its being deceptive. Compare *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974), with *Banzhaf* v. *FCC*, 132 U.S. App. D. C. 14, 405 F.2d 1082 (1968), cert. denied *sub nom. Tobacco Institute, Inc.* v. *FCC*, 396 U.S. 842 (1969). *Cf. United States* v. *95 Barrels of Vinegar*, 265 U.S. 438, 443 (1924) ("It is not difficult to choose statements, designs and devices which will not deceive").

Accord, Freidman v. *Rodges*, 440 U.S. 1 (1979). *See* Emerson, *The System of Freedom of Expression*, 21-26 (1970). Still, plaintiffs cite the case of *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943), *overruling Jones* v. *Opelika*, 316 U.S. 584 (1942) (license fee for selling religious paraphernalia found constitutional because it was pure commercial activity), for its statement that:

> But the mere fact that the religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterpreise. If it did, then the passing of the collection plate in charch would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books.

What plaintiffs fail to point out is that the *Murdock* Court qualified its statement on p. 116. The Court said "the present ordinance is not directed to the problems with which the police power of the state is free to deal . . . . They are pursuing their solicitations peacefully and quietly." * * * "Nor do we have here, as we did in *Cox* v. *New Hampshire*, *supra*, and *Chaplinsky* v. *New Hampshire*, *supra*, state regulation of the streets to protect and insure the safety, comfort, or the convenience of the public." *See* Tribe, *American Constitutional Law*, 724-25 n. 10 (1979) (*Murdock* tax fell unevenly on poor) *citing* Emerson, *The System of Freedom of Expression* 421 (1970). In this sense, then, *Virginia Board of Pharmacy* stands for the same proposition as *Murdock*. The state has a compelling interest in regulating speech, of whatever type, which is fraudulent in nature. *Accord Valentine* v. *Christensen*, 316 U.S. 52 (1942); *Schneider* v. *State*, 308 U.S. 147 (1940); *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940); *Edwards* v. *Maryland*, No. 79-1545 (August 12, 1980) *reversing* 476 F. Supp. 153 (D. Md. 1979); *ISKCON* v. *Bowen*, 600 F.2d 667 (7th Cir. 1979).

The interest of the government in exercising its traditional police power function for the public health safety and welfare is beyond question. Pursuant to this power, state administrators, such as defendants, may enact reasonable regulations which serve these ends. In this regard, the booth restrictions at the New York State Fair are a legitimate and compelling administrative aid for the protection of the citizens and society as a whole. One need not look any further than the facts of this

case to demonstrate that these restrictions are justified, and are reasonable time, place, and manner regulations which employ the least restrictive means by which the State may regulate First Amendment rights.

The State Fair booth regulation is a reasonable means to combat widespread fraud that cannot be effectively checked by the criminal justice system. There is no question from the record in this case that the Krishnas are engaged in a widespread and systematic scheme of accosting, deceit, misrepresentation, and fraud on the public in their Sankirtan activities. The record shows patterns of deceptive practices identical in nature and practiced throughout New York State, Massachusetts, and Maryland. Other cases involving the Krishnas have reported similar findings, though these courts did not delve into such incidents to the extent that was done in this case. *See Edward* v. *Maryland*, No. 79-1545 (August 12, 1980) at p. 9 n. 2; *ISKCON* v. *St. Fair of Tex.*, 461 F. Supp. 719, 723-24 (N.D. Tex. 1978). Plaintiffs have made little, if any, attempt to control its members or to bring these incidents to a halt. Quite the contrary, the Krishnas have condoned such practices by using experienced "thieves" to teach its newer members how to solicit money from the public in exactly the same way. Instead of removing individuals who are known to the Krishna Society as being repeat offenders or overly aggressive, the Krishnas have continued to accept the "fruits" of such solicitation methods for its own commercial gain, all under the "cloak" of being a religion.

There are two reasons why this practice continues today, and the first has been discussed immediately above. The second reason is that the regulatory methods employed in the past by various government officials and courts have facilitated the Krishnas in perpetuating their illicit acts. Both government regulations and court orders restricting their conduct have been flagrantly violated. *See e.g., Edwards* v. *Maryland, supra.* In

fact, the very regulations that plaintiffs urge this Court to recognize today as being less restrictive alternatives to the booth rule are the same regulations that plaintiffs have stipulated to with various defendants around the country and, from all indications, have violated with unabashed arrogance. The liason system proposed by plaintiffs as a less restrictive alternative is a sham. This Court finds little use in so-called "informal" dispute resolution methods which merely serve as a means to keep criminal recidivists from receiving the full measure of criminal justice. Such a device is not what should rightfully be considered a useful "social tool." As proof of this fact, defendants' Exhibit CR is a compilation of the complaints received by the West Springfield, Massachusetts Police Department, which took complaints for the 1979 Eastern States Exhibition. As a random sample, consider the first five complaints. The first complaint concerns a fair goer who, after receiving a record, was not given back the change he asked for by the Krishna devotee. The second complaint involved two fair goers who were approached by a devotee and each handed a record and told that they were lucky winners for the day. They were then asked for contributions for the records they had "won." The fair goer offered him a dollar. The Krishna devotee took five dollars from the fair goer, took the other fair goer's record back, and said "thank you." The third complaint concerns one of the witnesses in the instant case, Kenneth Solomon, who was wearing incorrect identification when spotted by a police officer when he was standing in an area of the fair grounds which was off-limits to him under the stipulated agreement between the Exhibition and the Krishnas and was engaged in a conversation with another devotee. The second Krishna was also using the wrong type of identification in violation of the stipulated conditions. The fifth complaint was by a Krishna devotee who claims that he handed a fair goer a record and told him that it was not available in stores, but was for a benefit of the Krishna Society which was helping people with farming and education.

At that point, the fair goer must have turned to walk away with the Krishna record in tow. The nature of the Krishna devotee's complaint was that the fair goer took the album without giving the Krishna a donation.

The first four examples are not isolated instances of accosting or misrepresentation, nor are they "speculative;" they are systematic, symptomatic and patternistic. While the penal law has been traditionally referred to by the courts as a means by which such incidents can be resolved to the best interests of the society as a whole, *see e.g., Schneider* v. *State*, 308 U.S. 164-65 (1970); *Edwards* v. *State of Maryland, supra*, at p. 10; *ISKCON* v. *Bowen, supra*, at 669; *ISKCON* v. *Kearnes*, 454 F. Supp. 116, 121 (E.D. Cal. 1978), this Court agrees with that portion of *ISKCON* v. *Griffin*, 437 F. Supp. 666, 673 (W.D. Pa. 1977) wherein the court stated that if applied blindly such a position would "ignore the realities of human behavior." Fair goers come to the State Fair from across the State and the United States to enjoy themselves, and not to file criminal complaints, or to return some months in the future to appear as witnesses. Moreover, the Fairgrounds is a difficult area to police in general, due to its size and numbers of people, and disguised Krishnas without identification badges are hard to identify. Even where the criminal laws are invoked, the result is of little deterrent value. Some Krishna defendants jump bail, or as is frequently the case, are simply transferred by the Society to another state. Still other devotees just return to the fair the following year to be arrested once again, utilizing the same aggressive or deceitful techniques, and with the same materials. In perpetuating the problems with our "solutions" we have rekindled the meaning of the words of Justice Jackson:

> In my view, the First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or informational ends as well. When limits are reached which such communications must

> observe, can one go farther under the cloak of religious evangelism? Does what is obscene, or commercial, or abusive, or inciting become less so if employed to promote a religious ideology? I had not supposed that the rights of secular and non-religious communications were more narrow or in any way inferior to those of avowed religious groups.

Douglas v. *Jeannette*, 319 U.S. 157, 179 (1943).

As a more realistic approach to such problems as fraudulent accosting and misrepresentation, the defendants' enacted a focused booth restriction which addresses a compelling state interest -- the exchange of money. This regulation is not in any manner aimed at regulating First Amendment rights, and its effect on those rights is incidental in the truest sense of the word. In its purpose and effect, defendants' booth rule focuses on the realities of speech that does "no more than propose a commercial transaction." *Va. Pharmacy Bd.* v. *Va. Consumer Council, supra*, 425 U.S. at 771 n. 1. It seeks to guarantee the fair goer that the speaker meets the fundamental societal standard of being authentic and honest when dealing in commercial transfers. Thus, the booth rule serves to accurately identify the purveyor and his wares. The commercial speaker is in the best position to verify who they are and what they sell, and it is reasonable for the state to enact regulations which force such disclosures. Due to the "hardiness" of commercial speech, there is little chance of the state chilling First Amendment rights by its more watchful supervision of commercial activity in a booth. At the same time, since such speech is more objective there is less reason to tolerate it being inaccurate for fear that the speech will be silenced. Thus, the booth restriction, by requiring that a commercial message appear in its truthful form through "additional information, warnings, and disclaimers," serves to protect society from deception. In fact the government intrusion on plaintiffs First Amendment rights is minimal since "[i]t is not difficult to choose statements, designs, and devices which will not deceive." *Id.*

APPENDIX A — Memorandum-Decision and Order of Munson, J., dated August 25, 1980.

In the words of Justice Jackson:

> A common-sense test as to whether the Court has struck a proper balance of these rights is to ask what the effect would be if the right given to these Witnesses should be exercised by all sects and denominations. If each competing sect in the United States went after the householder by the same methods, I should think it intolerable. If a minority can put on this kind of drive in a community, what can a majority resorting the same tactics do to individuals and minorities? Can we give to one sect a privilege that we could not give to all, merely in the hope that most of them will not resort to it? Religious freedom in the long run does not come from this kind of license to each sect to fix its own limits, but comes of hard-headed fixing of those limits by neutral authority with an eye to the widest freedom to proselyte compatible with the freedom of those subject to proselyting pressures.

Douglas v. *Jeannette*, 319 U.S. 157, 180 (1943). It is obvious that it would be "intolerable" if we permitted a majority to resort to the same tactics employed by the Krishnas. Today the court has allowed the setting of reasonable limits on their behavior for the future. Let there be no doubt, the court does this, not because plaintiffs' habits or beliefs are shockingly different, but rather because plaintiffs' continued actions, under the credible evidence, resemble other segments of society whose anti-social behavior has never been tolerated by the law.

Based upon the findings of facts and conclusions of law stated above, plaintiffs' complaint is hereby dismissed.

It is so ordered.

Dated: August 25, 1980
Syracuse, New York

s/ HOWARD G. MUNSON
Howard G. Munson
Chief U.S. District Judge

APPENDIX A — Memorandum-Decision and Order of Munson, J., dated August 25, 1980.

FOOTNOTES

[1] *Douglas* v. *Jeannette*, 319 U.S. 157, 179 (1943).

[2] Emerson, *The System of Freedom of Expression* (1970) p. 10.

[3] *Id.* at 11.

[4] *Douglas* v. *Jeannette*, 319 U.S. at 182.

[5] *Id.* at 179.

[6] See Exhibit A attached hereto.

APPENDIX A — Memorandum-Decision and Order of Munson, J., dated August 25, 1980.

(Definition of activity)

1. ISKCON members will be engaged in a religious practice of:
   a. talking to or otherwise communicating with third parties about their religious views.
   b. disseminating religious materials including magazines, books, cards, records and other information.
   c. presenting gift-greeting items such as sanctified flowers and candy -- or incense sticks and other small items.
   d. requesting and accepting contributions from said third parties for their religious literature, establishments and programs.

(Registration, liaison and fees)

2. ISKCON will provide a liaison to provide the information indicated herein and represent the society in any other necessary communications with any appropriate fair, security and government officials (city, county or state).

3. ISKCON's public affairs office may be called collect in case the liaison cannot be located at a time of needed communication. The liaison will provide this number.

4. ISKCON members will register in person or by phone at the beginning of each fair, show or event giving names and ages of members and times and places of activity to appropriate police officials, (changes will be reported immediately);

5. ISKCON members as referred to herein means only those persons designated as such by the liaison not others.

6. ISKCON members will present to appropriate state officials copies of ISKCON's State and IRS tax exempt certificates to prove the legitimacy of their society.

Exhibit A

7. ISKCON members will pay all fees charged at the fair/event.

(Manner of activity)

8. ISKCON members will engage in said activities in a peaceable manner and without harassment to the public. Likewise, ISKCON members are entitled to due protection from harassment by the public, (including persons patronizing the fair/event, parties and their agents, contracted to run fair/event attractions and parties and their agents renting fair/event booths or facilities) as afforded by applicable Federal, State and local laws respecting breach of the peace, harassment, libel and slander etc...

9. ISKCON members while performing the activities described herein, will not be interferred with in any way by any fair/event, or involved government, agency, agents or employees.

10. ISKCON members will be issued with standard ISKCON I.D. cards and will wear them in a visible manner;

11. ISKCON members will in no way express that any fair or government agency or any organization other than ISKCON is sponsoring and/or connected with their activities.

12. ISKCON members will not massively distribute hand bills which may lead to littering, our smallest literature being a substantial magazine given only to those agreeing to take it;

13. ISKCON members will not install or cause to be installed any type of structure such as but not limited to counters, tables, chairs and signs, unless a special request is made and approved;

14. ISKCON members, no more than two at a time, will approach and engage in said activities, any individual person or party unless consented to by that party;

15. ISKCON members will not engage in any deliberate touching of unconsenting persons;

16. ISKCON members will not use any sound amplification.

(Place of activity and number of representatives)

17. ISKCON members will not perform said activities at any area not open to the general public and specifically not in private concession areas and other areas rented by private parties;

18. ISKCON members may engage in said activities in buildings open to the public only as follows:
    a. At open lobbies and hallways;
    b. At exhibition areas -- at locations at least 10 feet from any exhibit or booth;
    c. Not in any stairs
    d. Not in the seating areas of any arena, lecture or performance facility.

19. ISKCON members will not perform said activities with people engaged in sitting and watching a performance or other special attraction, or waiting in a ticket line, coat line or refreshment line unless prior unsolicited consent in expressed.

20. ISKCON members will not operate directly in front of any entrances /exits to the fair/event or any entrances/ exits to any buildings. Directly in front, means here. no closer than 15 feet from the main entrances/exits and 10 feet from all others.

Exhibit A

21. ISKCON, by its liaison or public affairs office only, may agree to further limitation of the locations of said activities (after discussing with appropriate officials, referred to herein) if the need for such is clearly demonstrated, to safeguard a legitimate fair/event function or interest.

APPENDIX B – Decision of United States Court of Appeals, Second Circuit, dated August 28, 1980.

80-7709

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 28th day of August, one thousand nine hundred and eighty.

Present:

HONORABLE WALTER R. MANSFIELD,
HONORABLE AMALYA L. KEARSE,

Circuit Judges.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC. AND, ON BEHALF OF THEMSELVES AND ALL INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS MEMBERS, AND ALAN ATTIAS, A/K/A AJA DASA, AND KENNETH L. SOLOMON, A/K/A KESIHANTA,

Plaintiffs-Appellants

v.

J. ROGER BARBER, in his official capacity as Commissioner of the DEPT. OF AGRICULTURE AND MARKETS OF THE STATE OF NEW YORK, and THOMAS G. YOUNG, Director of the N.Y. State Industrial Exhibit Authority, and JAMES G. GARLICK, Acting Director of the N.Y. State Industrial Exhibit Authority,

Defendants-Appellees.

80-7709

UNITED STATES COURT OF APPEALS
FILED
AUG 28 1980
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX B — Decision of United States Court of Appeals, Second Circuit, dated August 28, 1980.

In support of plaintiffs' appeal from a judgment of the District Court for the Northern District of New York entered by Chief Judge Howard G. Munson on August 25, 1980, dismissing their complaint filed pursuant to Title 42 U.S.C. §1983 seeking on First Amendment grounds to enjoin enforcement of New York State Fair booth regulations adopted by the defendants which impose conditions on solicitation of funds at the Fair, application of which restricts plaintiffs to fund solicitation from booths, plaintiffs move to stay enforcement of the judgment and for a preliminary injunction allowing them to circulate and solicit money freely at the Fair.

The motion is denied. The district court's detailed findings (contained in Judge Munson's thorough 42-page decision) of fraudulent and disruptive conduct by plaintiffs' representatives at the Fair lend support to defendants' contention that under the circumstances the regulations as applied in this case may constitute a reasonable exercise of the state's police power in the interest of public safety and welfare.

Moreover, to grant the motion would be summarily to reverse the district court. Such hasty action is unjustified. Our decision does not intimate any views as to the ultimate merits of the appeal itself.

s/ WALTER R. MANSFIELD
WALTER R. MANSFIELD

s/ AMALYA L. KEARSE
AMALYA L. KEARSE

Case No. 80-795

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1980

MICHAEL HEFFRON, ET AL.,
Petitioners,

V.

INTERNATIONAL SOCIETY FOR
KRISHNA CONSCIOUSNESS, INC.,
ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE
OF MINNESOTA

Brief Amicus Curiae Of The State Of Ohio In Support Of The Petitioners

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1980

Case No. 80-795

MICHAEL HEFFRON, ET AL.,

Petitioners,

vs.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF AMICUS CURIAE OF THE STATE OF OHIO IN SUPPORT OF THE PETITIONERS

The State of Ohio, by and through the Attorney General of Ohio, pursuant to Rule 36.4, Rules of the Supreme Court of the United States, respectfully submits this brief as Amicus Curiae in support of the Petitioners.

INTEREST OF THE AMICUS CURIAE

The State of Ohio submits that the questions presented in this action are of national importance and that the decision rendered by this Honorable Court will have far reaching consequences for the State of Ohio as well as her sister states.

More particularly, the State of Ohio, like most or all other states, conducts an annual State Fair and, to a lesser extent, is concerned with the operation of "county" and other "local" fairs.[1] The Ohio State Fair, like the Minnesota State Fair, utilizes a so-called "booth rule" which serves to prohibit "roving solicitation" by requiring that all solicitations for either contributions or sale must be conducted from a particular fixed location on the fairgrounds.[2]

The Ohio "booth rule" has also been challenged by the International Society For Krishna Consciousness (hereinafter, ISKCON) with said challenge being heard by the United States District Court For The Southern District of Ohio on August 23, 1977. *See International Society for Krishna Consciousness v. Evans*, 440 F. Supp. 414 (S.D. Ohio 1977).[3]

In the *Evans* case the Federal District Court upheld the constitutionality of Ohio's "booth rule" and summarized its reasoning as follows:

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[1]The State of Ohio is directly involved in the operation of the Ohio State Fair through the Ohio Expositions Commission (hereinafter, Expo). Expo is the state agency which has been created by the State Legislature for the purpose of conducting the Ohio State Fair and maintaining and managing the state fairgrounds. Ohio Revised Code Sections 991.02 and 991.03.

In addition the State of Ohio is indirectly involved in the operation of county and other local fairs by virtue of the fact that they are governed by the rules of the Ohio Department of Agriculture. Ohio Revised Code Section 1711.11. These are the same rules utilized by the Ohio Expositions Commission and, of course, the "no roving solicitation rule" or "booth rule" is identical.

At this time the fairgrounds are not on a constitutional plane with an open-air park or street corner 'immemorially . . . held in trust for the use of the public, and, time out of mind, . . . used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' *Hague v. Committee For Industrial Organization,* 307 U.S. 496, 515, 59 S. Ct. 954, 964, 83 L. Ed. 1423 (1939). Nor can a strong parallel be drawn between the Ohio State Fair and a facility in which the intercommunication of ideas is an important aspect of the process to which the facility is dedicated. *See generally Tinker v. DeMoine Independent Community School District, supra.*

Balancing all of these factors, this Court concludes that the system of rental booths adopted by the Ohio Expositions Commission offers the best available means of accommodating the conflicting interests of the exhibitors in free

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[2]The current Ohio rule actually consists of a combination of two separate rules which provide as follows:

901-7-06 Every concessionaire and agent shall work only in front of his own concession and shall not be over four (4) feet from his concession while working at the fair.

901-7-22 No roving vendor or solicitor, acting for either a profit or non-profit organization or on his own behalf, shall be permitted on the fairgrounds except within the immediate area of the grandstand or coliseum for the purpose of vending food and soft drinks for the benefit of patrons attending scheduled events in the grandstand area or coliseum. The selling of official fair or race programs [in the immediate area of the grandstand or coliseum] by an agricultural society, the Ohio Expositions Commission or anyone contracting with an agricultural society or the Ohio Expositions Commission to sell official fair or race programs shall be exempt from this regulation. All solicitations for either contributions or sale must be made from within the confines of a booth or display unless otherwise exempted by this rule or rule 901-7-06 of the administrative code.

> speech, the fairgoers in access to communicated material, all fair participants in a minimum of congestion on major thoroughfares at the fairgrounds, and the people of the State of Ohio in an annual exposition of their agricultural and industrial achievements and in educational, competitive, and recognitional programs for youth.

ISKCON v. Evans, 440 F. Supp. 414, 425 (1977).

A comparison of the facts developed during litigation of the Minnesota State Fair case with the facts developed during litigation of the Ohio State Fair case will demonstrate the striking similarity between the nature of the two fairs and the "booth rule" utilized by each fair.

Thus, the State of Ohio has a direct and substantial interest in this Court's final decision herein.

SUMMARY OF THE ARGUMENT

It is beyond dispute that a state is free to regulate the time, place, and manner of First Amendment activity

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[3]The wording of Ohio's current "booth rule" as set out in footnote number one, *supra*, is slightly different from the way it was worded at the time *ISKCON v. Evans* was decided, but the alteration was one of form not substance. For a comparison, *see ISKCON v. Evans*, 440 F. Supp. 414, *at* 417.

It should also be noted that the term "booth rule" is somewhat of a misnomer in that it includes more than use of a booth or similar structure. The "booth rule" operates to require an individual or organization that chooses to participate at the State Fair (other than fair patrons) to acquire a certain specific physical location upon which may be placed such things as a food concession, a ride, a game, a novelty concession, a display of some sort, a tent or even an act of some sort. Thus, if ISKCON were willing to participate at the State Fair on the same terms and conditions as any other organization it would not necessarily be required to operate out of the confines of any particular structure and would, in fact, have various options available for meeting and mingling with the public. It would even have the option of obtaining several different (albeit, specific) locations around the fairgrounds.

generally in the interests of the public health, safety, welfare, peace, and comfort. The regulation at issue herein is the so-called "booth rule" which is basically a place and manner regulation. Where religious conduct is allegedly being restricted via operation of a facially neutral governmental regulation designed to serve an important societal interest, a court must employ a delicate balancing test to determine whether the governmental regulation involved is reasonable and does, in fact, serve a substantial or important societal interest so as to not run afoul of the constitutional free exercise rights of individuals.

In addition, when utilizing its balancing test, a court must take into consideration the nature of the forum and the conflicting interests involved in order to properly determine the extent of protection which should be afforded by the First Amendment to the speech or conduct involved. The State of Ohio submits that a fairgrounds is a truly unique forum and that application of the long standing "booth rule" is both a reasonable and a necessary regulation of conduct having nothing whatsoever to do with anyone's beliefs, including those of ISKCON members. It is further submitted that application of the "booth rule" does not foreclose meaningful participation by ISKCON or any other organization at a fair and, further, in the long run actually enhances all persons' opportunity to participate. In fact, the rule only places minor restrictions on ISKCON's various religious practices and without such a rule all degree of order at any fair would be in serious jeopardy as would the existence of the fair itself. The very *raison d'etre* of the "booth rule" is to provide enough order upon a fairgrounds so as to enable the multitude of participants to have some degree of equal and uninterrupted access to each other.

Amicus submits that a proper application of both First and Fourteenth Amendment principles compels the con-

clusion that ISKCON is not entitled to any special status on a fairgrounds. All that Amicus seeks is to be allowed to deal with ISKCON on the same basis as it does with any other organization operating on the State Fairgrounds. Amicus submits that it is reasonable and constitutionally proper to require ISKCON to adhere to the same terms and conditions as any other organization which chooses to participate in the State Fair. This will result in equal treatment for all and will afford ISKCON members the right to proselytize in a manner which will provide them with reasonable and equal access to all fair patrons.

The State of Ohio further submits that in taking all of these relevant factors into consideration this Court should conclude that utilization of the "booth rule" is both necessary and constitutional.

ARGUMENT

A NONDISCRIMINATORY "BOOTH RULE" UTILIZED BY A STATE FAIR, OR BY ANY FAIR OR SIMILAR ENTERPRISE, SERVES A LEGITIMATE AND SIGNIFICANT PUBLIC INTEREST AND IS A NECESSARY AND REASONABLE TIME, PLACE, AND MANNER REGULATION CONSISTENT WITH FIRST AMENDMENT STANDARDS.

1. An Examination Of The "Booth Rule"

The booth rule is a device which has been developed for use at fairs as a result of historical experiences which demonstrate the necessity for having a rule which will create some semblance of order out of a situation that would otherwise be thoroughly chaotic. In Ohio, as in many other states, the so-called "booth rule" or "no roving solicitation rule" was developed, was in place, and was enforced at the Ohio State Fair long before ISKCON

approached the Fair seeking special exception from its application. *See ISKCON v. Evans,* 440 F. Supp. 414, 418 (1977). Further, application of the booth rule does not bar ISKCON members, nor anyone else, access to a particular fairgrounds or to a significant percentage of patrons who choose to purchase a ticket and attend the fair. For example, the evidence offered during the trial in *ISKCON v. Evans, supra,* indicated that the booth facilities or specific location offered by the management of the Ohio State Fair to ISKCON would have afforded ISKCON members access to a minimum of 300,000 to 500,000 fair patrons over the duration of the fair.[4] *Id.,* 440 F. Supp. 414, 420.

Additionally, ISKCON did not allege discrimination, and this Court should be aware of the fact, that ISKCON was not being discriminated against. As a matter of fact, it would have been treated like any other organization seeking to solicit, sell, or otherwise do business on the fairgrounds. Nor was there a state official exercising any kind of discretion regarding the content of ISKCON's message or materials or whether ISKCON was entitled, as an organization, to admittance and participation at the fair. As a matter of fact, in both Ohio and Minnesota, no official of the fair management ever questioned the religious beliefs or motives of ISKCON's members. Thus, it is beyond dispute that application of the booth rule is intended to regulate only conduct (and then only to a very limited extent). Also, it is definitely not a form of "prior restraint" and has nothing whatsoever to do with the regulation of religious beliefs. *See also International Society For Krishna Consciousness v. Barber, et al.,* No. 77-CV-328 (N.D. N.Y., filed August 25, 1980), *at* 32-33.

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[4]Note that this figure is based on the assumption that ISKCON would only ask for and receive one specific location but there is no prohibition against obtaining more than one "booth space" or location.

In this action the only real dispute is whether Petitioners are entitled to require ISKCON members to maintain themselves in a stationary location upon the fairgrounds if and when they wish to engage in the practice of distributing and selling religious literature and soliciting donations for their cause. Thus, the Petitioners are merely attempting to regulate conduct on the part of ISKCON members; they are not prejudging ISKCON members' beliefs or imposing any prior restraint upon ISKCON members' actions upon the basis of their religious beliefs. ISKCON, in effect, seeks exemption from application of these regulations which would provide it with a unique or exaulted status on a fairgrounds if they were afforded this special status.[5]

In reviewing or examining the booth rule as it relates to any fairgrounds it is extremely important to recognize the unique character and nature of a fair. As this Court recognized in *Grayned v. City of Rockford,* 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 222 (1972), different types of public places present different considerations in assessing the reasonableness of regulations placing incidental limitations on First Amendment activity. Therefore, cases concerning the reasonableness of regulations governing public streets, sidewalks, office buildings, parks, bus terminals or airports are not dispositive when considering the constitutionality of regulations designed to regulate activity at a fairgrounds. This is true because the

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[5]Of course, if this Court were to determine that the "booth rule" cannot withstand ISKCON's First Amendment challenge it is obvious that all other persons similarly situated would be equally entitled to ignore the requirements of the "booth rule". Amicus submits that this would result in certain chaos and would seriously undermine the operation of any fair. Examples would include, but would not necessarily be limited to, all other persons who wished to solicit funds for any religious cause, politicians soliciting signatures for any sort of petition and persons or groups wishing to engage in various types of peaceable assembly (demonstrations).

forum is distinctly unique and the regulations are designed to serve radically different functions in a setting which presents even more serious problems regarding crowd density and behavior than are present in any of the previously described public facilities.* Further, a fair is comprised of patrons and concessionaires who have paid to participate in the operation of the fair, as such, these participants have rights different than those of persons walking down the sidewalk, through an airport, in a park, or through other types of public places.

The Ohio State Fair, as more fully described in *ISKCON v. Evans, supra,* is a virtual "beehive" of activity. For example, in the *Evans* case it was demonstrated that on any given day there would be approximately 175,000 visitors in attendance in an area of approximately 70 acres, all of whom would be interacting with over 1000 exhibitors throughout this area which contains in excess of 50 separate buildings housing over 30,000 exhibits, booth space, storage and display facilities. *Id.*, 440 F. Supp. 414, 424. Obviously, any degree of understanding of the situation which exists at a fair compels the conclusion that some form of regulation is necessary, and as the *Evans* court stated it "compels the conclusion that Expo's [the management agency of the Ohio State Fair] regulations are constitutionally proper." *Id. at* 424. The Court in *Evans* described in the Ohio State Fair's booth rule system as follows:

> The method which has been adopted by Expo is a system of booths available for rental to prospective exhibitors on a nondiscriminatory basis and without regard to the content of the exhibitors message (there are certain statutory

*This is not intended to imply that other heavily populated facilities have no need for such regulation but rather that such regulation is *inherently* and absolutely necessary for the actual operation of a fair.

> restrictions not relevant herein). Exhibitors are permitted to work within a restricted space around their individual concessions as well. This method guarantees each exhibitor a specific area where he is free from interference from other exhibitors and where he may communicate his message to passersby without interruption. At the same time, by restricting exhibitors to the immediate area of their booths, and then locating these booths outside of major thoroughfares, the general interest in protecting the free flow of traffic and providing untrammeled access to specific areas is advanced. Although a fee is charged for the rental of this booth space, this court has already determined that such a fee is not constitutionally improper since its purpose is simply to defray expenses resulting from the exhibitors' activities.

ISKCON v. Evans, 440 F. Supp. 414, 424.

The *Evans* court went on to note that the mode of speech being regulated was that of solicitation, and further that in addressing the constitutionality of the booth rule it was required to balance the interests of all persons concerned, *i.e.*, the ISKCON devotees, the fair patrons who purchased a ticket to attend the fair, the various commercial and noncommercial concessionaires who have invested time and money to participate at the fair, and the state, through the Ohio Expositions Commission (its fair-management agency), which has certain rights and also has certain duties and obligations to all of the above referenced parties. The *Evans* court, in utilizing this balancing test, held as follows:

> Balancing all of these factors, this Court concludes that the system of rental booths adopted by the Ohio Expositions Commission offers the

> best available means of accommodating the conflicting interests of the exhibitors in free speech, the fairgoers in access to communicated material, all fair participants in a minimum of congestion on major thoroughfares at the fairgrounds, and the people of the State of Ohio in an annual exposition of their agricultural and industrial achievements and in educational, competitive, and recognitional programs for the youth.

ISKCON v. Evans, 440 F. Supp. 414, 425.

Thus, it is fair to say that the booth rule is itself a balancing mechanism—an absolutely necessary device used to snatch a necessary degree of order from the jaws of what would otherwise be chaos. Fair patrons pay to attend the fair, *i.e.,* they enter into a contract with the management of the fair intending to obtain whatever entertainment they can for themselves and their children from its operation. Such people expect and are entitled to some necessary degree of regulation which inherently contains aspects of crowd control, traffic control, concessionaire control, control of fraud and deceit, safety control, and other types of rules and regulations which will assure them that they are able to move about, eat, participate in the games and other concessions, ride the amusement rides and do all of the other kinds of things that one does at a fair for the purpose of being entertained. Simply stated, people wish to do and are entitled to do all of the things of *their choice* that come to mind when one "goes to the fair". Without the booth rule regulation it is conceivable that fair patrons would spend more time fending off various types of "solicitors" than they would doing the things they went to the fair for in the first place. *See generally ISKCON v. Barber, supra, at* 40-41. *See also Lehman v. City of Shaker Heights,* 418 U.S. 298, 304, 94 S. Ct. 2714, 2718, 41 L. Ed.2d 770 (1974).

2. An Examination Of Relevant First Amendment Principles

Since *Cantwell v. Connecticut,* 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1940), the proposition that a state may regulate the time, place and manner of conduct, including religious solicitation, has not been open to serious question. As the *Cantwell* court observed:

> . . . the [First] Amendment embraces two concepts, freedom to believe and freedom to act. The first is absolute but in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.
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> * * *
>
> It is equally clear that a state may by general and non-discriminatory legislation regulate the times, the places and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading in liberties protected by the Fourteenth Amendment

Id., 310 U.S. 296, 303, 304, 60 S. Ct. 900, 903, 84 L. Ed. 1213, 1218.

Addressing itself specifically to the issue of solicitation, the Court in *Cantwell* fully clarified that a state is quite free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience, by stating:

> The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection

> be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible barrier to the exercise.

Id., 310 U.S. 296, 305, 60 S. Ct. 900, 904, 84 L. Ed. 1213, 1218.

The principle, recognized by this Court in *Cantwell, supra,* that a state is free to regulate the time, place and manner of First Amendment activity generally in the interests of the public peace, comfort, convenience or safety, has been applied in a variety of factual contexts. *See e.g., Prince v. Commonwealth of Massachusetts,* 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944), holding that a child labor ordinance could be validly applied to prohibit the sale of religious literature by a minor. Clearly, the state's interest in maintaining a free flow of traffic in public places is sufficient to support statutes or regulations which place incidental limitations on First Amendment activity. *Cox v. Louisiana,* 379 U.S. 559, 574, 85 S. Ct. 476, 485, 13 L. Ed. 2d 487, 498 (1965); *Chicago Area Military Project v. Chicago,* 508 F. 2d 921, 926 (7th Cir. 1975).

Like the regulations viewed with approval by the *Cantwell* court in the above quoted passages, the booth rule is designed to promote the public peace, safety, comfort and convenience. Moreover, the booth rule, like the regulations receiving the approval of the Court in *Cantwell v. Connecticut, supra,* does not involve any religious test or impose a "flat license tax" on the exercise of religion, and it does not place unbridled discretion in the hands of state fair officials regarding the matter of whether or not to issue a permit. As such, the booth rule is distinguishable from those regulations considered in many cases cited as authority by ISKCON.

Accordingly, the instant case does not present the same considerations as cases involving regulations which absolutely and flatly prohibit certain First Amendment activities, *Schneider v. State,* 308 U.S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939), *Hobbs v. Thompson,* 448 F. 2d 456 (5th Cir. 1971), or regulations which require persons to obtain a permit or the specific approval of certain public officials prior to engaging in specified activities, *Murdock v. Pennsylvania,* 319 U.S. 105, 63 S. Ct. 870, 87 L. Ed. 1292 (1943), *Lovell v. Griffin,* 303 U.S. 444, 58 S. Ct. 666, 82 L. Ed. 949 (1938), *Kuszynski v. Oakland,* 479 F. 2d 1130 (9th Cir. 1973), *Wolin v. Port of New York Authority,* 392 F. 2d 83 (2nd Cir. 1968), *International Society For Krishna Consciousness v. New York Port Authority,* 425 F. Supp. 681 (S.D. N.Y. 1977), *Washington Free Community, Inc. v. Wilson,* 334 F. Supp. 77 (D. D.C. 1972).

Similarly, the booth rule issue does not present a case involving regulations which are vague or uncertain in meaning or which call for the exercise of official discretion in determining whether or not to issue a license or permit without providing clear standards to guide officials in the implementation of the regulation. *See e.g., International Society For Krishna Consciousness v. Rockford,* 425 F. Supp. 734 (N.D. Ill. 1977), *Washington Free Community, Inc. v. Wilson, supra.* Nor is the booth rule comparable to the anti-picketing ordinances considered in *Grayned v. Rockford,* 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972), or *Police Department v. Mosley,* 432 F. 2d 1256, *aff'd.* 408 U.S. 92, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972), in that the booth rule does not fail to attempt to balance the individual's rights with the state's legitimate interests. In contrast with the arbitrary prohibitions imposed by the ordinances considered in *Police Department v. Mosley, supra,* and *Grayned v. Rockford, supra,* the booth rule

does not strive to create a buffer zone, insulating fair patrons from members of ISKCON, nor does ISKCON allege that compliance with the booth rule would have such an effect. Moreover, the booth rule does indeed strike a balance between the desire of persons and organizations for contact with the public and the interest of the state in promoting the safety, comfort, and convenience of all persons attending the fair.

The final matter to address in regard to general First Amendment principles is the question of what test a court should employ in deciding the constitutionality of the booth rule. And, of course, in applying the required legal test, the Court must pay particular attention to the nature of the forum and any conflicting interests involved. As will be more fully discussed *infra,* the Minnesota Supreme Court erred significantly in regard to both of these principles.

In *Heffron v. ISKCON,* the Minnesota Supreme Court paid lip service to the proposition that a regulation such as the booth rule is constitutional if it "furthers an important or substantial governmental interest" and even cited *United States v. O'Brien,* 391 U.S. 367, 377 (1968), for this proposition. *Id., at* A-6, Petition For Writ of Certiorari. The Minnesota Supreme Court then went on to state as follows:

> We agree that these facts [in the Minnesota case] suggest a situation in which the state's interest in maintaining order is substantial. We have no doubt that Rule 6.05's requirement that all vendors, exhibitors, and concessionaires perform their functions at fixed location furthers that interest significantly.
>
> What defendants must demonstrate, however, is not the importance of the state's undeniable interest in preventing the widespread dis-

> order that would surely exist if no regulation such as Rule 6.05 were in effect. Rather, they must establish the importance of the state's interest in avoiding whatever disorder is likely to result from granting members of ISKCON an exemption from compliance with the rule.

Heffron v. ISKCON, at A-7, Petition For Writ of Certiorari.

What this clearly demonstrates is that the Minnesota Supreme Court created its own test regarding the constitutionality of the booth rule, thus ignoring the constitutional principles set out in cases like *Grayned v. City of Rockford*, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972), *United States v. O'Brien*, 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968), *Cox v. New Hampshire*, 312 U.S. 569, 61 S. Ct. 762, 85 L. Ed. 1049 (1941), and *International Society For Krishna Consciousness v. Eaves*, 601 F. 2d 809 (5th Cir. 1979). Further, the Minnesota Supreme Court appears to have placed great emphasis on the proposition that the Minnesota State Fair failed to prove that it could not maintain some degree of reasonable order if ISKCON were granted an "exemption" from application of the booth rule rather than focusing upon the nature of a fair and determining whether the booth rule made any significant or substantial contribution to some combination of important governmental ends so as to outweigh its alleged restrictive effects on ISKCON's First Amendment rights. *See ISKCON v. Heffron, at* A-6-A-7, Petition For Writ of Certiorari. This narrow view of the "nature of the forum" (a fair) *per se* limited the court's ability to properly "balance" the various rights involved in deciding the reasonableness, propriety, and constitutional validity of the booth rule. Ultimately, by failing in this regard, the Minnesota Supreme Court was unable to carry out its proper function because in deciding

such issues a court must decide whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time. *See Grayned v. City of Rockford,* 408 U.S. 104, 116, 92 S. Ct. 2294, 2303, 33 L. Ed. 2d 222 (1972). It is the position of Amicus that engaging in roving solicitation upon a fairgrounds is basically and absolutely incompatible with the normal activity of participants at the fair and to allow otherwise would be destructive, unreasonable and unnecessary.

Thus, it is the position of Amicus that the proper test of constitutionality of the booth rule is whether it is "reasonable" in application and whether it "furthers an important or substantial governmental interest." Further, in applying this test of constitutionality the Court should "balance" the interests of *all* persons involved with due consideration being given to the nature of the forum and what is, as well as what is not, compatible with normal activity at such "forum". Amicus submits that the Minnesota Supreme Court failed in all of these respects in *Heffron v. ISKCON.*[7]

3. The "Booth Rule" Is Reasonable, Serves Significant Public Interests, And Is Constitutional.

One very interesting aspect of the booth rule is that it has long been a successful and integral part of the operation of fairs and was in effect long before ISKCON approached

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[7]*See also, ISKCON v. Bowen, supra,* 456 F. Supp. 437, 443, wherein the court stated "|w|e are not faced in the instant case with a situation where the court must *balance* competing fundamental interests." The *Bowen* court also stated that "|t|he fact that admission is charged to gain entrance to the particular 'public forum' is of no consequence." *Id., at* 442, *aff'd.,* 600 F. 2d 667 (1979).

Amicus submits that the *Bowen* court also failed in all respects to apply the proper legal principles in addressing the constitutionality of the booth rule.

either the Ohio or Minnesota State Fairs. In fact, in Ohio, it was in place long before the first member of the International Society For Krishna Consciousness ever set foot in the United States. *See generally, ISKCON v. Barber,* No. 77-CV-328, *supra, at* 7, and, *ISKCON v. Evans, supra,* 440 F. Supp. 414, 418. Obviously, the booth rule is not a regulation created for and directed toward a particular recently discovered "problem". Additionally, the booth rule is utilized in a truly peculiar and unique setting, *i.e.,* a fairgrounds. In view of all of these considerations, it is imperative that a reviewing court attempt to balance the rights of all persons involved and be wary of placing undue weight upon any prior case having nothing to do with a fairgrounds because "the nature of the forum" is truly distinguishable.

This Court should, of course, jealously guard all persons' First Amendment rights, but in approaching this inquiry in the context of the booth rule the Court should be fully cognizant of the nature of the forum involved and what is actually being regulated by the application of the booth rule. The Court should also take a common sense approach in its consideration. It is apparent that this is what the District Courts ultimately did in both *ISKCON v. Evans, supra,* and *ISKCON v. Barber, supra.* It is equally apparent that this is what the Minnesota Supreme Court failed to do in *Heffron v. ISKCON* and what the District Court failed to do in *International Society For Krishna Consciousness v. State Fair of Texas,* 461 F. Supp. 719 (N.D. Tex. 1978). For example, the Court's view of the nature of a fair in *ISKCON v. State Fair of Texas, supra,* as being a "congeries of hawkers, vendors of wares and services, and purveyors of ideas" constitutes a rather jaded view of what a fair is all about. *Compare, ISKCON v. Evans, supra,* 440 F. Supp. 414, 424-425.

Other courts are prone to place almost total emphasis on ISKCON's alleged rights and beliefs without making any meaningful effort to balance the rights of all other persons involved. This was evident throughout *Heffron v. ISKCON* as well as throughout the analysis contained in *International Society For Krishna Consciousness v. Bowen*, 456 F. Supp. 437, 443, *aff'd.*, 600 F. 2d 667 (7th Cir. 1979), *cert. den.*, 444 U.S. 963, 100 S. Ct. 448, 62 L. Ed. 2d 375 (1979).

Another very subtle, yet distinct issue, which has received various degrees of judicial consideration in the many ISKCON cases throughout the country, concerns the question of what the practice of Sankirtan actually means or actually entails. For example, in *Heffron*, the Minnesota Supreme Court stated:

> If Sankirtan is to be practiced properly, the various activities included in the practice of Sankirtan must be performed in a peripatetic manner. Members of ISKCON therefore have a special claim to an exemption from Rule 6.05 on free exercise grounds. Commercial vendors of literature can make no similar claim.
>
> Defendants argue that the facts as stipulated by the parties do not establish that Krishna Consciousness requires its followers to perform all of the activities comprising Sankirtan in a peripatetic manner. We recognize that in deciding this case we are limited by the parties' stipulation. We believe, however, that the peripatetic nature of Sankirtan is easily inferrable from the parties' explanation in their stipulation that the ritual is performed by 'going out into public places.'

Id., Petition for Writ of Certiorari, *at* A-7.

Also, during the *Bowen* litigation the District Court somehow determined that:

> The regulation, policy or resolution of the board is unconstitutional on its face and as applied to the plaintiffs insofar as it restricts their right to free exercise of their religion in denying them the opportunity to practice the required ritual of 'Sankirtan'. 'Sankirtan', by definition, cannot be practiced from the confines of a booth. . . (citations omitted.)

Id., 456 F. Supp. 437, 443.

However, these findings were based upon untested stipulations and, as more fully clarified during the trial of the *Barber* case in New York, these supposed findings are not necessarily correct or even true. For example, in *ISKCON v. Barber,* which is the only reported case in which the practice of Sankirtan was explored in any meaningful detail, a vastly different version of the practice of Sankirtan is described. *Id.*, 77-CV-328, *at* 8 *et seq.* In addition to providing a vastly different description of the theological underpinnings of the practice of Sankirtan, the court also clarifies the highly pronounced difference between the theological description of Sankirtan and how it was in fact practiced by the ISKCON members at the New York State Fair. *See e.g., ISKCON v. Barber, supra,* pp. 8-10 as compared to pp. 18-29 and 38-40.

The misrepresentation, fraud and deceit that was carried out by the ISKCON representatives at the New York State Fair, as more fully described by the *Barber* court, *supra,* is merely illustrative of some (but not all) of the problems which could, and surely would, arise if various roving solicitors were allowed to "work a crowd" at any time and place of their choosing. The fact that roving solicitors, via

claim of First Amendment rights or otherwise, can engage in any behavior of their choosing at any time, and thereafter disappear into the crowd is simply another example of why the booth rule is a necessity upon a fairgrounds. The argument that the criminal process can be used to solve this potential problem if the booth rule were to be invalidated is both naive and unrealistic. In a sense, that is like always having to "catch the horse because the law forbids closing of the barn door." Common sense dictates a more appropriate rule, *i.e.,* the booth rule.

Further, in deciding whether ISKCON members or, for that matter, anyone should be entitled to exercise their alleged First Amendment rights in a manner which would accrue to the obvious detriment of all other participants *at a fair,* it is necessary to question whether the First Amendment actually contemplates such an extended application of its principles or whether this would not, in fact, constitute a seriously distorted view of its purpose and spirit. Again, common sense and logic compel the conclusion that the booth rule is not violative of constitutional principles in the setting in which it is employed.

Thus, it is the position of Amicus that even if the ISKCON religion theoretically prompts its followers to go into public places and proselytize, sell, and solicit, it does not require or entitle them to go upon a fairgrounds and engage in roving solicitation in violation of the longstanding booth rule. In view of the evidence presented in *Barber, supra,* it is highly debatable that the ISKCON religion actually "requires" this behavior of its members and, even if it does require them to go into public places, such as a fair, and engage in the practice of Sankirtan, it is undeniably obvious that they can subscribe to their religious beliefs while at the same time operating from a specific stationary location such as would be required by application of the

booth rule.[8] After all, they would still be in a public place, practicing the tenet of Sankirtan (as more fully described by the *Barber* court, *supra*) and would yet be subject to some limited degree of regulation which would surely accrue to the benefit of the many other persons interested in the operation of the fair.

[8]Assuming *arguendo* that the self-serving testimony offered by modern day Krishnas that their religious beliefs require them to go into public places and solicit for funds is theologically accurate, this does not mean that the state or this Court must thereafter allow such conduct at any time or any place merely because it is associated in the mind of the believer with his system of religious beliefs. This Court has allowed the state to place various regulations on rights associated with religious beliefs (*e.g.*, polygamy, bigamy or smoking marijuana) and there is no reason to conclude that some minor regulation of ISKCON's religious practices in public places is beyond the realm of tolerable regulation because of constitutional considerations. *See e.g., Reynolds v. United States*, 98 U.S. 145, 25 L. Ed. 244 (1879), and, *Davis v. Beason*, 133 U.S. 333, 10 S. Ct. 299, 33 L. Ed. 637 (1890).

CONCLUSION

The Minnesota Supreme Court's decision in the instant case is contrary to law and should be reversed.

For the reasons set out herein, the "booth rule" utilized by the Minnesota State Fair, or any fair, serves a legitimate and significant public interest and is a necessary and reasonable regulation consistent with applicable First Amendment standards.

Therefore, the "booth rule'" should be pronounced constitutional.

Respectfully submitted,

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